

A FULL
ANSWER

To all the
Popular Objections

That have yet Appear'd,
For not Taking the Oath of ALLEGIANCE
TO THEIR
PRESENT MAJESTIES,

Particularly offer'd to the
Consideration of all such of the DIVINES
OF THE
Church of ENGLAND

(And Others) as are yet
UNSATISFIED:

SHEWING,

Both from Scripture and the Laws of the Land, the Reasonableness thereof, and the Ruining Consequences, both to the Nation and Themselves, if not Complied with.

By a Divine of the Church of ENGLAND;
and Author of a late Treatise entituled, *A Resolution of
certain Queries, concerning Submission to the Present Government.*

Licensed, and Entered according to Order.

London: Printed, and are to be sold by R. Baldwin in the Old-Bailly. 1689.

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That have yet Appear'd,

For not Taking the Oath of Allegiance

TO THEIR

Present **MANIFESTIES, &c.**

REGULAR EDITION

FOR THE TAKING OF THE OATH OF ALLEGIANCE

IN THE CIVIL SERVICE

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Popular Objections

That have yet Appear'd,
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ANSWER

Popular Objections

TO THEIR PRESENT MAJESTIES

OF THE Church of ENGLAND (And Others) as are yet UNSATISFIED

SHewing
Both from Scripture and the Laws of the Land, the Reasonableness thereof, and the Righting of Conscience, both to the Nation and Themselves, if not Compelled with

By a Divine of the Church of ENGLAND

and Author of a late Treatise entitled, A History of the Church of England, from its first Institution to the present Time, &c.

LONDON, and Printed according to Order.

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A REQUEST

TO ALL

Such as are yet Unresolved

IN THE

Case of Allegiance.

THere are few Men so ancient or wise, who may not still improve their Judgments, and be made sensible of their Errors, and without shame do that which *St. Augustin* did, to his great reputation, make their Retractions. The effects of the Prejudices and Prepossessions of the Mind are like those of the Disease of the Body, called the *Jaundice*, which represents things black or yellow, according to its own distemper, only that of the Mind is far more incurable than that of the Body. It is with Men as with new Vessels, whatever strong Liquors are first infused to them, they still retain a smack and savour of them. No Tyranny is with more difficulty cast off, than the Prejudice and Prepossessions of such Principles by which

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we

we have been in our first Education captivated and dogmatized. No less than a Miracle could divert St. Paul from that furious temper wherein he had been educated as a *Pharisee* : To evidence the truth hereof, I shall only instance in some learned and pious Men, that have been educated in the *Church of Rome*, who having been instructed from their youth, *that they ought to believe as the Church believes ; that their Church is guided by an Infallible Spirit ; that the Pope is Christ's Vicar and Plenipotentiary*, are prepared to receive and believe all the Dictates of that Church, though contrary to the Scriptures, to Reason and Sence, with equal veneration as the written Word. Hence it is, that they swallow the Doctrines of the *Popes Supremacy*, to depose one Prince and set up another, as he shall see cause, of his *Infallibility* in coining new Articles of Faith, forbidding what Christ commanded, and commanding what Christ forbid ; of *Transubstantiation*, and *Worshipping of Wafers and Images*, and offering more Prayers to the *Virgin Mary*, than to God and their Saviour, and some of them esteem her Milk of equal vertue with Christ's Blood ; and it is unaccountable how deaf they are to all those charming Arguments, which from Scripture, Reason, and Sence, have been irrefragably urged against them. Now though the grandeur of that Church, and the interest of some Men therein, may thus captivate many, yet I cannot, nor can my Brethren impute this blind obedience and implicit belief of learned Men, and such as are piously inclined, to any thing more than to the prejudices of their Education. And we cannot but think it their duty to search the Scriptures, to consult their own Reason, and the Arguments of such sober, learned and pious Men, as differ from them in such Doctrines ; Nor is it impossible but we who have

have been educated in the Church and Kingdom of *England*, may have our Judgments captivated by some false Opinions and Principles concerning the Power of our Kings, and the Allegiance of Subjects; for the rectifying of which, it is necessary to reflect on those times wherein we had our Education, which I suppose was with many others, as with my self, about the Year 41, but with the most of my Brethren since that time, whereof I shall give this brief account :

It is evident to all Men of sober principles, that have had any true relation of the rise and progress of those unhappy Divisions and Wars, that they were begun and continued by a factious and discontented Party, under the vain pretences of the great danger that threatened our *Religion* and *Liberties*; which War (abating some groundless Fears and Jealousies, occasioned by some unusual Acts of that best of Kings (and the best are not free from all faults) to which the iniquity of those times, that reduced him to great exigence, had necessitated him) had no other cause, but the ambition of some, the discontent of others; and the hopes of the Jesuits on one side, and of other Sects on the other side, to raise themselves by the ruine of the established Church, to which that blessed Prince was so devoted, as well as to the welfare of his Subjects, both in respect to the Laws and Liberties, that he sacrificed his Life for their preservation, as by the event, through the great mercy of God, it proved to be; for though that bloody War wrought great confusion and destruction both before and after the death of the Royal Martyr, yet the dissention of his enemies, occasioned the discovery of each others wicked designs and practices, which are still in remembrance, and abundantly justify that gracious King (as do also many gracious condescensions

and overtures for peace) against all their assaults and usurpations. Wherefore when after divers confused revolutions it pleased God, by a Miracle of Mercy, to recal the Royal Family, and to establish the King on his Throne, the Church in its Rights, and the People in their Liberties, it is no wonder if some transports of Loyalty and Joy did carry the People to some degree of excess; for the people had now before their eyes a lively Image of *Charles* the First, in the meekness and mercifulness of *Charles* the Second. And whereas the Parliaments under *Charles* the First, had abridged him of a necessary Revenue, that under *Charles* the Second granted him even above his desires; and as event proved, more then was consistent with the welfare of the Nation; neither was the Clergy backward in their expressions of Loyalty, who with *Mephiboseth*, 2 *Sam.* 19. 30. were content not only to part with some of their just Possessions to those that had usurped them, but ready to say, *Yea, let them take all, for as much as my Lord the King is come again in peace to his own house.*

And now it was, that the Parliament prudently considering what Miseries the Nation endured by the fall of the Crown, made it their chief work to re-adorn and fix that by enlarging the Revenue, making new Statutes to secure the King's person against traitorous Conspiracies, and requiring the people to declare, *that it was not lawful on any pretence whatsoever, &c.* And divers things and persons did tempt the King to think himself an absolute Prince.

Finch, an ancient Lawyer, did attribute to the King all the Divine Perfections, (*viz*) ' 1. That of Sovereignty, All Lands being held of him, no Action lying against him. 2. Omnipotence, having power ' of

' of Life and Death over all his Subjects, whom he
 ' might command to serve in his Wars. 3. Omnisci-
 ' ence, by his Intelligence at home and abroad. 4. Ma-
 ' jesty, in that nothing could be taken from him, and
 ' being an inviolable Majesty. 5. Infinity and Ubiqui-
 ' ty, being present in all his Courts, and in all places
 ' with all persons. 6. Perpetuity, in that the King
 ' never dies. 7. Justice, in that the King can do no
 ' wrong. 8. Perfection, in that he is never in Infan-
 ' cy, hath no corruption of Bloud, but the Crown as-
 ' soils all Crimes. 9. And Truth, in that he can-
 ' not be estopped, or presumed to declare a Falshood.
 ' 10. And lastly, Clemency in dispensing with Laws,
 ' and pardoning Offenders. Nor are some Statesmen
 ' much behind. *Hobs de Cive*, c. 12. s. 1, 2. says,
 ' That the Rules of Good and Evil, Just and Unjust,
 ' Honest and Dishonest are the Civil Laws, and there-
 ' fore whatever the Legislator commands, that is to be
 ' accounted good, what he forbids, is to be accounted
 ' evil; and therefore it is a wicked Speech, that Kings
 ' are not to be obeyed unless they command just things:
 ' That before Empires were established, there was no
 ' such thing as Just or Unjust, whose natures are rela-
 ' tive to a command, and that every action is in its own
 ' nature indifferent, and that it becomes Just or Un-
 ' just is from the Law of the Emperour, wherefore
 ' those that are Emperours make things Just which
 ' they command to be done, and those things Unjust
 ' which they forbid; but private men that would as-
 ' sume to themselves the cognizance of Good and E-
 ' vil, do aspire to be like Kings, which cannot consist
 ' with the safety of Government. Such blasphemous
 and pestilential Doctrines would confound Heaven and
 Hell, and turn Men into Devils, and Order into Confu-
 sion.

The

The Doctrines of such as *Sibthorp* and *Manwaring* on these Principles, might deserve to be confuted for saying too little rather than too much, and *Nero*, *Dioclesian*, and all other Tyrants be justified in all their Cruelties against innocent Christians: This were not only to stamp a Divine Character on all Kings, but to grant them a Divine Nature, whose will is the only Law. Now although these venomous Eructations of an Atheistical Spirit have not poisoned many, yet some have been infected by them, and the Opinion of an Absolute and Arbitrary Power in the King, which the late King challenged to himself, prevailed with too many: and the many Addresses made to him in compliance therewith, and the Doctrine of *Non-resistance* and *Passive Obedience*, made him presume of effecting that Design, the effects whereof were seen and felt in this Nation, and had not God in his great Mercy created an unexpected Deliverance for us, our condition might by this time have been as deplorable as those of our Neighbouring Nations.

And now, my Bretheren, I hope that as none of you can approve of the King of *France* his Violation of his solemn and repeated Edicts on the behalf of his Protestant Subjects, and of the barbarous Cruelty executed on his Loyal and Innocent Subjects, to make them Proselytes to his own Perswasion; so neither can you approve of those Endeavours which tended to the same end, which are less justifiable in our Case, where the Protestant Religion is established by Law, than where Popery was so settled: Nor can I blame the *Hollanders* for shaking off that Iron Yoak which the House of *Austria* would have rivited on their Necks.

It

It will therefore be no disparagment to any person to pursue a *melius Inquirendum* on those Principles which he hath assumed: I know my Bretheren will not account it so in any learned Papist, or other Dissenter, nor think it a shame to any such, if upon better information he should alter his Judgment, especially when he shall find that many serious, learned, and uninterested men do upon very probable Reasons differ from him. I have therefore chosen to deal mostly on the Authorities of such Men, being prevented by the Learned and Elegant Author of the *Case of Allegiance*, in the Rhetorical and Rational part. And having in some haste drawn up my former Treatise, I desire the Reader to add these to their proper places.

And first to qualifie the extravagant Expressions of *Finch*, I oppose the Judgment of *Fortescue*, who, *fol. 25.* says, *Ad hanc potestatem a populo effluxam Rex habet quo non licet ei alia potestate populo suo dominari principatu namque nedum Regali sed & politico populo suo dominatur.* The King is to Govern his People by no other Power, then that which flows from his People, (*i. e.*) a Political, not a Regal Power. And *p. 32.* *Ad tutelam legis subditorum Rex erectus est*: The King is set up for the Safeguard of his Subjects Laws.

* To the Freaks of *Hobs*, the Concessions of King
 * *Charles* the First, in answer to the nineteen Propositions, may be a full Answer. There being three kinds
 * of Government, Absolute Monarchy, Aristocracy, and
 * Democracy, and all having particular Conveniencies
 * and Inconveniencies; The Experience and Wisdom of
 * your Ancestors, hath so moulded this out of a mixture of those, as to give this Kingdom the Conveniencies

'niciencies of all three, without the Inconveniencies of
 'any one, as long as the Ballance hangs even between
 'the three Estates, and they run joyntly in their pro-
 'per Channels. The ill of Absolute Monarchy is Ty-
 'ranny, of Aristocracy Faction and Division, of Demo-
 'cracy Tumults, Violence, and Licentiousness: The
 'good of Monarchy is Uniting a Nation under one
 'Head, the good of Aristocracy is the conjunction of
 'Counsel, in the ablest persons for the Publick good,
 'the good of Democracy is Liberty, and the Courage
 'and Industry which Liberty begets. The Lords be-
 'ing trusted with Judicatory Power, are an excellent
 'Screen and Bank between the Prince and the People,
 'by just Judgment to preserve the Law, therefore the
 'Power legally placed in both Houses, is more than
 'sufficient to prevent and restrain the Power of Ty-
 'ranny, and the Power of punishing is already in your
 'hands according to Law. That Kings are bound by
 the Coronation-Oath, we have the Acknowledgement
 of *Edward the Third, c. 15.* declaring thus in
 Parliament, *We considering that by the Bond of our
 Oath we be tied to the Observance and Defence of such
 Laws, &c.* King *James* the First speaks to the same
 purpose, as King *Charles* the First did, *If (says he)
 we take the People as one Body or Mass, then as the Head
 is ordained for the Body, and not the Body for the Head,
 so must a Righteous King know himself to be ordained
 for his People, and not his People for him.* For though
 a King and his People be *Relata*, yet can he be no
 King if he want People and Subjects.

Having met with two Discourses pertinent to the
 present Occasion, in the Writings of *Pufendorf* a learn-
 ed Civilian, I have thought fit to translate them,
 the Books being rarely in the hands of my Brethren:
 The

The one describes the Nature of an Absolute and a Limited Monarchy, the other shews what Obedience Subjects owe to such Princes as presume to Govern contrary to the Established Laws.

Pufendorf *Politica Inculcata*, Printed 1679, p. 107, &c.

“ What temperaments ought to be used in Commonwealths, and of what force they are, will clearly appear, if the difference betwixt an Absolute Empire, and that which is Limited by Laws, be rightly understood, which will be more requisite because of the pernicious Abuse of the word Absolute, which not being rightly understood hath given an opportunity to wicked Princes to vex the Commonwealth, and to commit many Wickednesses, it being easie for Flatterers thereby to blow up the Ambition and other Vices of Princes, (*viz.*) You are an Absolute Prince, therefore you may do what you please, oppress your Citizens and Neighbours that you may be called a great Man, &c. which Inferences seeing the worst of men think to be naturally deduced from that word, therefore it is become detestable in free Cities; yea, some learned men are not ashamed to say, that an Absolute Prince may do all that *Nero* did, under the notion of an Absolute Prince: Therefore as this is the chief Liberty of particular men, that they can dispose of their own things and actions, yet within the bounds of Nature, and this Liberty agrees with all men that are not subject to another's Empire: So when more men unite into a Civil Society, it is necessary that this Liberty should exist in them as in a common Subject, (*viz.*) a Liberty to determine of the means

C

“ requi-

" requisite to their own preservation by their own di-
 " cretion, which Liberty as it hath a right annexed
 " to prescribe those means to the Subjects, and to
 " compel them to Obedience is called Empire, whence
 " in every Government there is an Absolute Empire,
 " (*viz.*) in Habit though not in Exercise, for it is a
 " contradiction to be subject to none, and not to have
 " a right to dispose of what is his own. Now that
 " Absolute Empire is not in it self unjust or intolle-
 " rable, may easily be known from the end of the In-
 " stitution of Government, for we do not therefore
 " constitute Governments that men may act accord-
 " ing to their Wills, without regard to the Law of
 " Nature, but that provision may be made for the
 " security of each particular by the united strength
 " and wealth of all ; therefore to Govern Absolutely,
 " is nothing else but a power to prescribe to the Sub-
 " jects such means for procuring the Publick welfare
 " as shall seem to the Governour's discretion most con-
 " ducing thereunto, and as present occasions may re-
 " quire.

" Because the Judgment of one Man in discerning
 " what is expedient for the Publick safety, may be
 " easily deceived, and there is not in all men such
 " soundness of mind as to be able to restrain their
 " wills within reason in so great a Power, therefore it
 " seemed expedient to many People not to commit
 " such an Absolute Power to one Man's Judgment,
 " subject to Errours and prone to Vices, but to pre-
 " scribe to him a certain form and manner of Admini-
 " string the Government, on the observation of which
 " Form they obliged themselves to obey.

" Nor is there any injury done to Princes by this
 " Limitation of the Empire, because they are advan-
 " ced

"ced to that Empire by the Peoples choice; for if it
 "seemed grievous to hold a Government, and not to
 "have power to Administer it Arbitrarily, he might
 "have refused it; nor is it consistent with his Obligation,
 "upon such acceptance of the Government, to
 "endeavour afterwards by Fraud or Force to subvert
 "the prescribed Form. That which some object is
 "very frivolous, (*viz.*) That whereas Kings are appointed
 "by God who hath commanded them to Govern well,
 "to which end a fulness of Power is requisite;
 "and therefore it must be presumed, that God
 "hath given them a certain measure of Power, which
 "neither they ought to suffer, nor the People require
 "to be restrained; even as a Husband cannot consent
 "that his Wife should usurp a Power over him,
 "or prostitute herself.

Doctus spectare lacunar

Doctus & ad calices vigilanti stertere naso.

"Now though it be granted, that Empires are from
 "God, (*i. e.*) God hath ordained that Government
 "should be, so it is left to the Arbitriment of such
 "Nations to whom God hath not prescribed a particular
 "Form, to appoint what Form of Government
 "they approve of; As for Example, There is no Divine
 "Precept, that a free People being about to
 "choose a King, should choose a *Sigismund* rather than
 "a *Henry*; nor is there any particular Form of Government
 "by Divine Right, wherefore it is wholly
 "in the will of the People whether they will erect an
 "Absolute or a Limited Empire, provided that the
 "Limitations contain nothing impious or contrary to

" the ends of Government. And that you may right-
 " ly understand by what kind of promise a Government
 " ceaseth to be Absolute, we must consider that a King
 " accepting a Government binds himself to Administer
 " it justly, either by a general or special Promise, which
 " commonly is confirmed by Oath ; a general Promise
 " may be either tacite or exprest, a tacite Promise must
 " be understood in the very acceptance of the Govern-
 " ment, though it be not exprest, yet most frequent-
 " ly it is exprest, an Oath and solemn Rights being ad-
 " ded, nor is it unusual in such Promises to describe the
 " Office of a King by enumerating the chief parts,
 " (*viz.*) to defend the Good, to punish the Evil, to ad-
 " minister Justice, &c. Now such Promises no way di-
 " minish the Absoluteness of Government, the King by
 " them is obliged to Govern Justly, but in what man-
 " ner, or what means he shall use, is left to his discreti-
 " on ; but a special Promise in which both the manner
 " and the means are exprest, is two-fold, (*viz.*) the one
 " binds only the Conscience of the King, the other ren-
 " dereth the Obedience of the Subjects conditional al-
 " so. An Example of the first sort is this : If a King
 " promise that he will not commit Offices to a certain
 " sort of people ; that he will grant to none such privi-
 " ledges as shall be burdensome to others ; that he will
 " make no new Laws, impose no new Tributes, nor use
 " foreign Souldiers ; When as yet there is no Coun-
 " cil established which the King is bound to consult in
 " cases whertin the safety of the Nation (the Supreme
 " Law) may force him to recede from his promise ;
 " here the Administration of the Government is restrain-
 " ed to certain Laws, and when the King without neces-
 " sity shall do against the Laws, he is guilty of breach
 " of Faith, yet the People have no power to refuse the
 " King's

" King's Commands, or vacate his Acts, for if the
 " King say, that the safety of the people necessitates
 " him to extraordinary Actions, (and it must be pre-
 " sumed that he says true) the Subjects have nothing
 " to reply, seeing they did not reserve to themselves
 " the cognizance of such extraordinary Cases; from
 " whence it is clear, that a people doth not sufficiently
 " provide for themselves, in giving the King a limited
 " Empire, unless there be a Council constituted, with-
 " out whose consent the Prince alone cannot determine
 " such cases. But then the Empire is more strictly li-
 " mited, if it be expressly agreed between King and
 " People, that he shall govern according to certain fun-
 " damental Laws; and in certain Cases consult with
 " his People and Nobles; and if he shall do otherwise,
 " that the people shall not be obliged to obey him, ha-
 " ving promised not an absolute but a legal Obedience;
 " yet by such fundamental Restrictions the Govern-
 " ment is not maimed, for all such Acts as can be per-
 " formed in an absolute Empire may be performed in
 " this; nor in such a Government doth a King cease to
 " be Supreme, for it doth not follow, that because he
 " cannot do all things after his own will, therefore he
 " is not Supreme; nor because I am not bound to o-
 " bey him in all things, therefore I am his Superior or
 " Equal, for Supreme and Absolute are not the same,
 " the one excludes a Supreme or Equal, the other im-
 " plies a power of doing all things at his own plea-
 " sure.

Pufendorf, de Jure Nat. p. 1002. Quid si Princeps inno-
centem Civem, &c.

" What is to be done if a Prince endeavours in an
 " hostile manner to destroy an innocent Subject, who
 " can-

“ cannot fly from him? *Ans.* A man can hardly
 “ conceive how the same person can sustain the Name
 “ of a Prince and an Enemy; or how he can expect to
 “ be accounted Holy, whose Zeal inspires him to sacri-

The true Case of England. “ fice an innocent Subject to his own lust. He
 “ would conclude, that if he whose Duty it is

“ to protect another, do unjustly become his
 “ enemy, he doth thereby release that other of his obli-
 “ gation to him, so far at least that he may without
 “ using force seek protection from another against his
 “ furious assaults. And such defence is then more fa-
 “ vourable, when the number of those whom such a
 “ Prince seeks to destroy is very great. But seeing that
 “ an instance of such a Prince as seeks to destroy his
 “ innocent Subjects only for his lust is very rare, a
 “ greater difficulty doth arise, what is to be done when
 “ a Prince, under pretence of Law, becomes injurious
 “ to his Subjects, by imposing unjust Commands, such
 “ as the Subject thinks he cannot obey, without sin,
 “ which he judgeth worse than death? If the executing
 “ of a Command be such as I cannot perform without
 “ sin, and no reason can be offered either from any
 “ fault of mine, nor from the consideration of the pub-
 “ lic welfare, why I should be constrained to execute such
 “ an act, it plainly appears, that the Prince makes it
 “ his business to destroy an innocent Subject for his own
 “ lust, and bears an hostile intention against me, where-
 “ by he acting not as a Prince, but as an Enemy, I may
 “ well suppose, that he hath released my obligation to
 “ him as a Subject. And afterward, p. 1004, 1005.
 “ speaking still of an absolute Prince, he says, what if
 “ he impose grievous Taxes without summoning a
 “ Council that may judge of the necessity of the good
 “ of the Common Weal do require them? what if some

“ emi-

" eminent men be unjustly cut off on pretence of Plots
 " against the Prince, and by orderly process of Justice ?
 " what if he keep not his promises, or observe not the
 " priviledges formerly granted ? if such an absolute
 " Prince pretend great Crimes, or the necessity of the
 " Common Weal, he shall be thought to have acted
 " rightly ; for all priviledges have this exception, unless
 " the safety or necessity of the Common Weal do for-
 " bid them. But there is a great difference between
 " these two positions, 1. That the People hath power
 " to resist the Magistrates and reduce them to better
 " order, if the Magistrate doth not govern according
 " to their pleasure ; And 2. That the People or par-
 " ticular persons have a right in the case of extreme
 " danger, as when the Prince becomes an Enemy, to
 " defend their safety against him ; thus when it is said,
 " that a people which hath yielded themselves to sub-
 " jection, hath not thereby lost the right of vindicating
 " their liberty or safety ; this must be understood in
 " no other sence than that a people may defend them-
 " selves against the extreme and unjust force of the
 " Prince, which defence, if it succeed well, it redeems
 " their liberty, because when the Prince becomes an
 " enemy, he himself seems to absolve his Subjects from
 " their obligation to him, so that the Subject is not
 " bound to return again under his yolk, no not altho'
 " the Prince should change his mind. There is no na-
 " tural connexion between these two, (*viz.*) An ab-
 " solute power to procure the welfare of any one, And
 " an absolute power to destroy him at his pleasure, nor
 " can it be shewn, how such a power in the Prince for
 " the peace and security of the Subject, can oblige them
 " when the Prince acts contrary. Therefore they infer
 " amiss, who say, That because the supreme Prince is
 " ac-

"accountable only to God, therefore it was the will of,
 "the people, when they made themselves Subjects, to
 "deprive themselves of all right against their Prince,
 "as if he that defends his life, against a violent assaulter
 "doth thereby call him to judgment, as if such de-
 "fence were an act of Jurisdiction, or as if besides the
 "necessity of self-preservation some special Call were
 "required in him who defends his life against an unjust
 "force, any more than he that seeks to depel hunger or
 "thirst with Meat and Drink, for as *Grotius* says right-
 "ly, if they who first set up a supreme power over
 "them, should have been demanded, whether they
 "would impose this burden on themselves, that they
 "would rather chuse to die, than in any case repel with
 "Arms the unjust violence of their Superiors; they would
 "have answered, that they never so intended, for that
 "were a greater mischief than what they sought to a-
 "void by their consenting to live under Government;
 "before which time they lay open to injuries, but so
 "as they might resist them, but by such a consent
 "they should have bound themselves to endure all
 "manner of injuries from him whom they themselves
 "had armed, without any resistance. A hazardous
 "fight is a less evil than a certain death, p. 108. Now
 "none but absolute Princes enjoy such an inviolable
 "sanctity, not such as are any way obnoxious to the
 "People, nor such as depart from the Government and
 "plainly relinquish the Kingdom, whatsoever is law-
 "ful against a private person, is lawful against a
 "Prince, when they practice grievous Injuries. As
 "also when a King seeks to alienate his Kingdom, or
 "change the manner of Governing, it is then evident,
 "that he doth not only do a vain act, but that if he
 "persist to effect his designs by force, the Subjects may
 "op-

“ oppose him by force. And, p. 40. of his *Politica in-
 “ culpa*, he resolves this Case; That a person taken
 “ in War may promise to do for his liberty what his
 “ enemy hath power to force him to do, viz. he may
 “ swear never to bear Arms against his conqueror; this
 “ may be done without injury to his Prince, because
 “ if the conqueror should destroy him he could never
 “ do his Prince service; but if his Prince and Country
 “ should be afterward invaded by the conqueror, that
 “ not only seeks to take away that life and liberty which
 “ he granted him, but the lives and liberties of his Re-
 “ lations, it may be lawful to defend himself by Arms
 “ against his conqueror, notwithstanding his Oath,
 “ which implied an offensive taking of Arms only; for
 “ to what purpose were life and liberty granted for the
 “ present time, if it should not be lawful to defend it
 “ when assaulted afterward.

After all my weak endeavours, in a business out of
 my sphere, I have reason to doubt, that I shall not pre-
 vail with such persons as have withstood the declared
 judgment of that great Council, to whom the cogni-
 zance of this Affair doth properly belong, whose ability
 and integrity they cannot reasonably suspect. Yet with
 what submission would I become a Petitioner to my
 Superiors, on behalf of such of my Brethren, as are
 known to be zealous *Protestants*, of Consciences truly
 tender, that fear an Oath, Men that have strict Prin-
 ciples of Loyalty, of pious and peaceable Lives and
 Conversations, and whose number in the Nation is so
 few, that they cannot be suspected of designing any
 disturbance to the Government, may not some time
 and forbearance be indulged to such? what if until
 a Convocation be called, that they may be better in-
 formed? If any sort of Men deserve their Princes favour,

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these

these are they ; and I pray God, it may not be granted to Men of worse Principles.

But *Cynthia aurem vellit*. I shall rather therefore expostulate farther with my Brethren ; Why should you not submit your private Judgments to the publick Judgment of the Nation ? What better Counsel could you chuse, than what the Nation did chuse ; or what better Methods could they take to prevent Confusion ? They did not drive away the King by fighting against him, neither did they fight for him, that was their declared Enemy. They set the Crown on the nearest in the Royal Line, such as love our Nation and Religion : Suppose the King had been actually dead, and the Crown (as it ought) had immediately descended to the present Queen, who considering the great trouble of the Administration thereof in such difficult times, should have desired, that the Administration might be committed to the present King, who is every way qualified for it, could such a Meet-help have been denied ? What Monsters of Ingratitude then are they, who when that Great Prince took his life in his hands, and parted with all to save our lives and all that we have, if we shall refuse him that honor which without his running so great a hazard for us, could we in Duty have denied it him ? I cannot think that either the Sovereignty of the Prince, or the Allegiance of the Subjects do stamp such an indelible Character on them as can by no means be erased. I am not bound to take base Metal for current Coin, tho' it have the Royal Stamp ; and if when a Subject of *England*, by reason of Poverty or Oppression goeth into *France* for his safety and subsistence, and be enfranchised there, his Allegiance to his former Prince doth cease ; What disparity of reason is there, if a King of *England*, having by Male administration made his Government uneasy

uneasie and impacticable, flies to *France*, and becomes uncapable of governing and protecting his People, to affirm, that his Sovereignty and his Subjects Allegiance do cease together : Once more, we cannot but acknowledge, that such an exchange of Princes as the hand of God, and the People have made, is a Blessing and no Robbery ; why then should we halt any longer between two Opinions, whom we ought to follow ? If our present Sovereigns give us Protection, it will be justly expected, that we pay them our Allegiance. If any think that the late King hath still a right, why do they not declare for him ? a Neutrality in this Case is intolerable ; for tho' some few may think themselves obliged in Conscience by their former Oaths, yet many others, out of fear, or hopes of interest, or perhaps out of a secret affection to *Popery*, may refuse to pay their Obedience to the present Government ; and our Governors, not being able to discern and judge of the Consciences of Men, will take all such Recusants for Enemies, and that they that are not with them are against them, and only wait for an opportunity to do them mischief ; and the People will be apt to condemn them for *Papists* in Masquerade. For as the Historian says, *Non caret scrupulo societatis occultæ qui manifesto facturi obviari desinit* : He gives a just suspicion of a secret Confederacy, that neglects to obviate an apparent Danger. And then though deliverance should come, such men cannot expect to partake of it ; for the Controversie now to be decided, is like that which *Cicero* observeth between the *Romans* and *Carthaginians*, *Non an uter imperaret sed an uter esset* : Not which of the Kings shall Reign, but which shall be Ruined. And it would be a very ill requital, to expose him again to ruine, who once exposed himself to ruine, that he might save us. But

I would ask the men of interest, *Cui bono?* what benefit they think to reap, by hovering thus in the Air: if you are *Protestants*, can you think, that the late King will preserve you in your Religion, Laws, and Liberties? if you are *Papists*, can you so depend on his crazy Life, as to think, that a *Protestant* Prince would not succeed? and then by how much the more troublesome and triumphant you have been for a short time, by so much the more will you be fettered by severe and just Laws, that you may be so no more. In a word, they that in this juncture of Affairs will declare themselves friends to neither party, do deserve to be declared enemies to both. And as *Livy* says of *Metius Suffetius*, who doubting of the event of the War between the *Romans* and *Albans*, hovered at a distance with his Army until the *Romans* had gotten the victory. That they condemned him to be torn in pieces with wild Horses. The like is observed of *Pub. Servilius*, *Medium se gerendo nec plebs vetuit odium nec apud patres gratiam inuit*, by behaving himself as a Neuter in the Civil Wars of *Rome*, thinking to retain the favour of the Senate and People, he incurred the displeasure of both; whereas *Appius*, tho' he had taken the contrary party, upon a mistake, *patrius mire fuit gratus*, was graciously reconciled and accepted of by the Senate. Therefore I conclude with *Suetonius*, *Quando alterum habiturus es inimicum aut socium jacienda est alea alterutri adherendum*. Seeing you must have one to be your Friend or your Enemy, come to a resolution, and adhere to him whom you chuse to make your Friend.

If after all that has been said, be not satisfactory, as to the Case of Allegiance to their present Majesties, and the Voting the Crown vacant, pray see the sense of the Lords and Commons in the following Declaration, viz.

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The Declaration of the Lords and Commons assembled at Westminster, presented to their Highnesses the Prince and Princess of Orange, at White-hall the 13th of February, 1683.

‘**W**Hereas the late King *James* the Second, by the Assistance of divers Evil Counsellors, Judges, and Ministers imployed by him, did endeavour to Subvert and Extirpate the Protestant Religion, and the Laws and Liberties of this Kingdom,

‘By Assuming and Exercising a Power of Dispensing with, and Suspending Laws, and the Execution of Laws without Consent of Parliament.

‘By Committing and Prosecuting divers worthy Prelates for humbly Petitioning to be excused from Concurring to the said Assumed Power.

‘By issuing and causing to be executed a Commission under the Great Seal for Erecting a Court called the Court of Commissioners for Ecclesiastical Causes.

‘By Levying Money for and to the use of the Crown, by pretence of Prerogative, for other time and in other manner than the same was Granted by Parliament.

‘By Raising and Keeping a Standing Army within this Kingdom in the time of Peace, without Consent of Parliament, and Quartering Souldiers contrary to Law.

‘By causing several good Subjects being Protestants, to be Disarmed, at the same time when Papists were both Armed and Imployed contrary to Law.

‘By Violating the Freedom of Election of Members to serve in Parliament.

‘By Prosecutions in the Court of King’s Bench for Matters and Causes cognizable only in Parliament, and by divers other Arbitrary and Illegal Courses.

‘And

And whereas of late Years partial, corrupt, and unqualified Persons have been returned and served on Juries in Tryals, and particularly divers Jurors in Tryals of High Treason which were not Free-holders.

And excessive Bail hath been required of Persons committed in Criminal Cases, to elude the benefit of the Laws made for the Liberty of the Subject.

And excessive Fines have been imposed, and illegal and cruel Punishments inflicted.

And several Grants and Promises made of Fines and Forfeitures before any Conviction or Judgment against the persons upon whom the same was to be levied.

All which are utterly and directly contrary to the known Laws and Statutes and Freedom of this Realm. And whereas the said late King *James* the Second having Abdicated the Government, and the Throne being thereby Vacant,

His Highness the Prince of *Orange* (whom it hath pleased Almighty God to make the Glorious Instrument of Delivering this Kingdom from Popery and Arbitrary Power) did, by the Advice of the Lords Spiritual and Temporal, and divers principal Persons of the Commons, cause Letters to be written to the Lords Spiritual and Temporal, being Protestants, and other Letters to the several Counties, Cities, Universities, Boroughs and Cinque-ports, for the choosing of such Persons to represent them, as were of right to be sent to Parliament, to Meet and Sit at *Westminster* upon the 22d day of *January*, in this Year 1688, in order to such an Establishment, as that their Religion, Laws and Liberties might not again be in danger of being Subverted.

Upon which Letters, Elections have been accordingly made.

And thereupon the said Lords Spiritual and Temporal,

ral, and the Commons pursuant to their respective Letters and Elections, being now Assembled in a Full and Free Representative of this Nation, taking into their most serious Considerations the best Means for attaining the ends aforesaid,

Do in the first place, as their Ancestors in like Cases have usually done, for the Vindicating and Asserting of their Ancient Rights and Liberties, Declare,

That the pretended Power of Suspending of Laws or the Execution of Laws by Regal Authority, without Consent of Parliament, is Illegal.

That the pretended Power of Dispensing with Laws or the Execution of Laws by Regal Authority, as it has been assumed and exercised of late, is Illegal.

That the Commission for Erecting the late Court of Commissioners for Ecclesiastical Causes, and all other Commissions and Courts of like nature are Illegal and Pernicious.

That Levying of Money for, or to the use of the Crown, by pretence of Prerogative, without Grant of Parliament, or for longer time, or in other manner than the same is, or shall be Granted, is Illegal.

That it is the Right of the Subject to Petition the King; and all Commitments and Prosecutions for such Petitioning, are Illegal.

That the Raising or Keeping a Standing Army within the Kingdom in time of Peace, unless it be with Consent of Parliament, is against Law.

That the Subjects which are Protestants may have Arms for their Defence suitable to their Condition, and as allowed by Law.

That Election of Members of Parliament ought to be free.

That the Freedom of Speech and Debates, or Proceedings in Parliament, ought not to be Impeached or

Que-

‘ Questioned in any Court or place out of Parliament,
 ‘ That excessive Bail ought not to be required, or ex-
 ‘ cessive Fines imposed, nor cruel and unusual Punish-
 ‘ ments inflicted.

‘ That Jurors ought to be duly Impannelled and
 ‘ Returned, and Jurors which pass upon Men in Tryals
 ‘ for High Treason, ought to be Free-holders.

‘ That all Grants and Promises of Fines and Forfeit-
 ‘ tures of particular persons before Conviction, are Ille-
 ‘ gal and Void.

‘ And that for Redress of all Grievances, and for the
 ‘ amending, strengthening and preserving of the Laws,
 ‘ Parliaments ought to be held frequently.

‘ And they do Claim, Demand, and Insist upon all
 ‘ and singular the Premises as their undoubted Right
 ‘ and Liberty : And that no Declarations, Judgments,
 ‘ Doings or Proceedings to the prejudice of the People
 ‘ in any of the said Premises ought in any wise to be
 ‘ drawn hereafter into Consequence or Example.

‘ To which Demand of their Rights, they are parti-
 ‘ cularly encouraged by the Declaration of his Highness
 ‘ the Prince of *Orange*, as being the only means for ob-
 ‘ taining a full Redress and Remedy therein.

‘ Having therefore an intire Confidence that his said
 ‘ Highness the Prince of *Orange* will perfect the Delive-
 ‘ rance so far advanced by him, and will still preserve
 ‘ them from the Violation of their Rights, which they
 ‘ have here Asserted, and from all other Attempts upon
 ‘ their Religion, Laws and Liberties.

‘ The said Lords Spiritual and Temporal, and Com-
 ‘ mons Assembled at *Westminster*, Do Resolve,

‘ That *William* and *Mary*, Prince and Princess of *O-*
 ‘ *range*, be, and be Declared King and Queen of *Eng-*
 ‘ *land*, *France*, and *Ireland*, and the Dominions thereto
 ‘ belonging : To hold the Crown and Royal Dignity of
 ‘ the

' the said Kingdoms and Dominions, to them the said
 ' Prince and Princess during their Lives, and the Life of
 ' the Survivor of them: And that the sole and full Ex-
 ' ercise of the Regal Power, be only in and exercised by
 ' him the said Prince of *Orange*, in the names of the said
 ' Prince and Princess during their joynt Lives: And af-
 ' ter their Deceases, the said Crown and Royal Dignity
 ' of the said Kingdoms and Dominions, to be to the
 ' Heirs of the Body of the said Princess: And for de-
 ' fault of such Issue, to the Princess *Anne* of *Denmark*,
 ' and the Heirs of her Body: And for default of such
 ' Issue, to the Heirs of the Body of the said Prince of O-
 ' range.

' And they do pray the said Prince and Princess of O-
 ' range, do accept the same accordingly.

' And that the Oaths hereafter mentioned, be taken
 ' by all Persons of whom the Oaths of Allegiance and
 ' Supremacy might be required by Law, instead of them,
 ' and that the said Oaths of Allegiance and Supremacy
 ' may be Abrogated.

' I A. B. Do sincerely Promise and Swear, that I will
 ' be Faithful, and bear true Allegiance to their Majesties
 ' King William and Queen Mary. So help me G O D,
 ' &c.

' I A. B. Do Swear, That I do from my Heart Abhor,
 ' Detest and Abjure, as Impious and Heretical, this Dam-
 ' nable Doctrine and Position, That Princes Excommunica-
 ' ted or Deprived by the Pope or any Authority of the See
 ' of Rome, may be Deposed or Murdered by the Subjects,
 ' or any other whatsoever. And I do Declare, That no
 ' Foreign Prince, Person, Prelate, State or Potentate, hath
 ' or ought to have any Jurisdiction, Power, Superiority, Pre-
 ' eminence, or Authority Ecclesiastical or Spiritual within
 ' this Realm. So help me G O D, &c.

Now if in the Judgment of the Great Counsel, after mature Deliberation, these evident Matters of Fact did amount to a just Cause to pronounce the Crown Void, I cannot perceive what in Justice they could do otherwise, then to lodge it where it is, the present Circumstances in which the Nation was, requiring a speedy Settlement: For which end it was provided after the Vacancy of the *Roman* Empire, the Electors were to agree in the Choice of another within thirty Days, or else to be allowed only Bread and Water until they had agreed. If it be objected, That the Crown ought to be set only on the Queen, it may be thus answered, That there is as little Deviation made as possibly could be; and that the present King might have claimed it by Conquest, with as much reason as either *William* called the Conqueror, or *Henry* the Seventh; but he had also a better Title than either of those, being nearer in Bloud then either of them; and the Title of his Lady being undoubtedly the next in Succession, but by a suspected Child was endeavoured to be excluded, ought to be (as happily it is) vindicated by her Royal Consort, whereupon the Administration of the Government being by general Consent conferred on him, during Life, it is no more than what he might have claimed, nor less than what they could have granted: And therefore there is no cause can be given why we should not transfer our Allegiance to him, at least in conjunction with the Queen; in the case of *Henry* the Seventh the Nation did so before^{his} marrying the Queen, in whom the right Title was, and much rather may we, when the Queen's Title is acknowledged, and the Test of all publick Acts and Writs are in both their Names; so that during the joynt Lives of the King and Queen, (supposing that King

James

James hath forfeited the Crown) our Allegiance is undoubtedly due as by the new Oath is required. But if yet any man should scruple the taking this Oath, as not being satisfied that the right of Title is in the present King, I say that this is more than appears to be required either by the Letter of the Oath, or the intention of the Authority that imposed it.

And, *first*, as to the intention of the Legislator, let it be considered, what other intent they could have in laying aside the Oaths of Supremacy and Allegiance, wherein the right Title of the Prince in being was so punctually asserted, to make room for this wherein the assertory part is wholly omitted; but to prevent the objection of such as should pretend this too nice scruple of Conscience, to which there being in the Nation so many Pretenders to a Liberty of Conscience, which cannot be forced, I do rationally believe, that the present Authority had a respect in penning the Oath so cautiously, for the Oath doth not say, (as without gross Nonsense it can be supposed) *I do promise that King William and Queen Mary are lawful King and Queen, &c.* but only *that I will bear Faith and true Allegiance to King William and Queen Mary*; which may be done, supposing that King *William* is only King *de Facto*, and Queen *Mary de Jure*; as in the Case of *Henry* the Seventh before mentioned. And as to the Letter of the Oath, though the Comparison be odious, yet the Resolution of Bishop *Sanderson* in the case of subscribing the Engagement, may determine such scrupulous Consciences; the words of the Engagement are, *I do promise to be True and Faithful to the Common-wealth of England, as it is now Established without King or Lords*: The words of the present Oath are, *I do sincerely Promise and Swear, that I will be Faithful, and bear true Allegiance to their Majesties King William and Queen Mary.*

Mary. Where first observe, that the Swearing doth no more add an Obligation to the Matter sworn to in the Oath, than the Promise and Subscription doth to the Matter of the Engagement.

Secondly, The Ingagement was for altering of the Species of the Government, from that which was most Noble, to that which was most Ignoble, and indeed to an *individuum vagum*, there being then no Government established.

Thirdly, The King then in being had in no case made a Desertion or Forfeiture of his Crown, but endeavoured, with the hazard of his Life, to vindicate his just Title.

Fourthly, The Invader then was a Subject, and a notorious Usurper, who by fraud and force had driven him from his right. All which considerations made a great difference between the legality of taking this Oath, and subscribing that Ingagement.

But here I must premise, that I do not insist on this Instance, as if I thought the present King and Queen were only so *de facto*, for I am rationally and fully persuaded that they are rightfully King and Queen of England, &c. as ever any of their Predecessors were.

That learned Casuist gives a higher and stricter or a lower and laxer sence of the Engagement; the lower and laxer sence he thus expresseth: *Whereas for the present, the Supreme Power, under which I am, is actually possessed by the House of Commons, without King or House of Lords, I promise, that, as long as I live under their protection, I will not contrive or attempt any act of Hostility against them, but living quietly and peaceably, will endeavour faithfully in my Place and Calling to do what every good Member of a Common-wealth ought to do for the safety of my Country and preservation of Civil Society therein.*

And

And our Casuists says, p. 106. *There want not greater probabilities of reason to induce us to believe, that this sense is to be accounted the immediate and declared intent of the imposers, who though they might have a more secret reserved and ultimate intent, the ingager is not concerned in it, the Equivocation (if any) lieth on the Imposers score, not on the Subscribers; Because,*

1. Many, both Divines and Lawyers, took it, which they would not have done in another sense.

2. Because if the Imposers had intended to bind to more, they might have easily framed the words so as not to be capable of this lower construction.

3. Because it is usual for new Governors to abstain from harsh proceedings, even against those whom they know to be disaffected to their Government. *Remissius imperanti melius paretur*; therefore the Bishops resolution is, *that when the Imposer chuseth words capable of a double sense, it is neither necessary nor expedient, that the Promiser do doubt which sense the Imposer doth mean, but may in prudence, and without violation to his conscience, make his advantage of the ambiguity, and take it in the lower sense*, because since the Faith that is to be given, is intended to the behoof of him to whom it is given; it concerns him to take care, that his meaning be expressed in such words, as may manifest his intent, which if he neglects, the promiser is not bound to lay a greater obligation on himself than he needs to do; and though the imposer might intend more under his ambiguous terms, yet the promiser is not bound to take notice of it.

The Reader, if concerned, may see more in that Case, but I think this sufficient and pertinent to the present Case.

As to the Original of Supreme Power, and the Majesty.

jeſty reſulting from thence to the perſon of the King, I ſhall here ſubjoyn two excellent Diſcourſes of the learned Civilian *Pufendorf*.

Of the Original of Supreme Power.

That Supreme Empire may have its effect, there is required, firſt, ſuch natural Strength as may enforce the Subject to obey his Commands; and ſecondly, a Title or Authority by which he may enjoyn what is to be done or omitted; both theſe do flow from thoſe Contracts by which Societies are formed; for although no man can naturally transfund his ſtrength into another, yet that perſon may poſſeſs the ſtrength of others, to whoſe will they are obliged to apply their ſtrength, without reſiſtance or diſobeying his command: and when all do thus ſubmit their wills to the will of one, he then hath ſufficient power to compel them to Obedience. Thus *Livy*, *l. 2. c. 59.* The Power of Empire conſiſts in the conſent of them that are to obey: and this Contract gives a clear Title by which the Empire is lawfully conſtituted, by a willing Submission of the Subjects, and not by Violence: this is the immediate cauſe from whence Supreme Power, as a Moral Quality, doth reſult. And evident it is, that ſound Reason did dictate, (on the multiplication of Mankind) that their Honour, Peace, and Safety could not ſubſiſt without Societies, which neither could well be without a Supreme Power; Hence it is that the Higher Powers are ſaid to be appointed of God, as being the Author of the Law of Nature; for not only thoſe things are ſaid to be of God which he doth inſtitute immediately without the intervention of any Humane Act, but thoſe alſo which men by the conduct of right reaſon, as the condition of times and places do require, have received in reference to that obligation which lies on them from God, *1 Tim. 2. 2.* That they may lead

a quiet and peaceable life, &c. Hence God in the Scripture approves of Empire as his Institution, and by strict Laws establishes its Sanctity and Veneration. Thus Bæcler on Grotius l. 1. c. 3. f. 6. The Supreme Power is not to be attributed only to the acts of Men, but the command of God, and the Law of Nature, or to such acts of Men as are agreeable to the Law of Nature; for he that commanded Society commanded the Order of Society, whereof Empire is the soul. The true sense whereof is this, that the Divine Command doth exert it self by the dictates of Reason, whereby Men understood that their peace and welfare, which is the end of the Law of Nature, cannot subsist without Civil Society, nor that without a Supreme Power.

As to the fifth Commandment injoyning Obedience to Governours, that doth not exclude those second Causes by which their Power is produced, as the Precept against these, excludes not the Original of Dominion. Governours are said to be God's Vicergents in this sense, that because the bare respect of the Law of Nature, and its Author, did not effect the Peace and Order of Mankind, that end is perfected by the efficacy of Civil Empire; for that a Society may obtain its end, God appointed by the Law of Nature the Order of Commanding and Obeying, in which, by God's will, and the dictates of Nature, there must be a Supremacy depending on none but God. But whether this Supremacy should be committed to one or more, and by what particular means the state of the Government be constituted, this is merely a Humane act. So Grotius l. 1. c. 4. f. 7.

That men agreed to live in Society not by any express Command of God, but of their own accord, yet not without the will of God and the dictates of Reason; whence arose Civil Power, which St. Peter calls the Ordinance of Man, 1 Pet. 2. 13.

Though this might suffice as to the rise of Civil Authority, and the Veneration due to it, yet some ascribe it to a higher Institution, as Hornius de Civit. l. 2. c. 1. That it is so immediately from God, that no act of Man contributes to it.

So that where a free People do choose their King, they only design the person on whom there is a Majesty immediately conferred by God; as in free Cities the Magistrate is elected by Suffrage of the Chamber, but his power derived from the Supreme Governour. But this Assertion, though it have a fair reception among many, doth wholly destroy all the fundamental Laws that are agreed on between the Prince and People for the administration of Government; for by this there is a Majesty ascribed only to Kings, but denied to free Common-
wealths.

wealths, whereas there is the same Supremacy over the Subjects in every Commonwealth. Whereas therefore he makes God the only cause of Majesty, who immediately on the Election of the People infuseth that Majesty into the King; wherein he conceives this Majesty to be a Physical quality, as they do who hold, that Government is God's Ordinance so intirely, that no Creature doth contribute any thing to its Institution, which bewrays a gross ignorance of things Moral: As for his demand, How an extraordinary Splendor should shine forth in him that is advanced to the Throne from an obscure condition, unless it came from God—, let it be considered by them who know not to discern shadows from substances. His Argument from God's special Care over Princes, proves nothing, God having the same care of others; and many Kings have perished by Poisons and Treasons. His chief Argument is this: That seeing neither any individual Person, nor the Multitude have this Majesty in themselves, they cannot confer it on the King. Ans. That a Moral quality, such as Empire is, may be produced in another by the agreement of them who had it not formally in themselves; As many Voices do make a Harmony, which no one could do. This Argument is like that of Socrates, who would persuade Alcibiades to adventure himself in the Assembly of the People, saying, If thou dost condemn them singly, thou need'st not to fear them altogether. But seeing Empire doth consist in the Subjects Concessions of Non-resistance, and of their Strength and Wealth at the dispose of the Emperour, these are the Seeds of Majesty, which lying hid and dispersed in single persons, do by a combination and agreement exert themselves and produce a Majesty.

I cannot conceive how a wise Christian King can delight to hear what some Flatterers may suggest; That God hath transferred on him that right of Government, which, by the Creation, was only in himself; and thence infer such things as rob God of his Authority, to exalt the King, and would make men doubt, whether God had not abdicated all his Authority, and left it to Kings, and Kings conceive that they may do what they please impunely. But suppose a company of Banditti grow so numerous as to set up an Emperour of their own, and depose their lawful Prince, doth God transfer the Majesty of this on that other? And the most of Kings owe their rise to Conquests. And it is not impossible, but that the Father of a Family may have so numerous an Off-spring, that they may constitute their common Father to be their King; Doth this act transfer such a Majesty on him, or if he appoint a Successor, or the several Families set up another than such

such a one as was appointed by him, perhaps a younger Brother, or a Servant, which is not against any Law of Nature, doth God bestow such a Majesty on the Successour? This is such a Metempsychosis of Majesty as no wise man will desire a farther disproof of, seeing that whenever a Kingdom doth become void, it is left to the People to confer the Government, by their consent and submission, to his Successour.

So that this Author had no such notion of a Divine Majesty residing in the person of a King as imprinted an indelible Character on him, which could not by any Vice or Miscariage of his own be obliterated.

Such Politicians as write of the Majesty of Governours, do distinguish it into real and personal, and affirm the real Majesty to be in the People, who had the power to constitute what form of Government they pleased, whether Monarchy or any other, and in case the Governours in the Form constituted, do fail of Heirs or Successours, the restoring of the Government revolves on the Community: What is held on Condition may be forfeited, and on the Forfeiture returns to them that gave it. Those Sovereigns that are limited by Law, and have not the whole Legislative Power, but are bound by Oaths to govern according to Law, may forfeit.

Tyranni in Exeritio do decidere Jure suo Hereditario: And if a King of England, who hath *Regnum Pactionatum*, makes himself an Absolute Prince, he makes himself no King of England, because he alters the Species of Government.

Puffendorph *de Jure Naturæ*, &c. p. 1008. But this Sanctity none but such as are Absolute Kings do enjoy, not such as are under the Power of the People, nor such as desert the Government, or abdicate the Kingdom, against whom when they act things very injurious whatever is lawful against a private person, is lawful against them. As also if a King that is constituted by his People, would alienate his Kingdom, or alter the Form of Government, it is evident that he not only cannot do it, but if he continue to effect it by force, the People may resist him by force.

Another difficult question is, what is and what is not lawful in case of an unlawful Invasion. (Here observe that the Invasion by the Prince of Orange was not as to him unlawful, and therefore much more may be due to him than to unlawful Invaders.) What obligation may the commands of such have, being in possession of the Kingdom, because force may compel a necessity of external Obedience, but not of such an obligation of Conscience, that if the Sub-

jest obey not, he shall be guilty of Sin ; in this Case, to avoid a greater evil, a man may be by force constrained to do what else he would abhor, which if we can by any means we ought to avoid. But what if the Invader having by force and evil arts got the possession, yet pretends he hath a right to it, and behaves himself as a good Prince, in this case it seems very probable, that he who is thus in possession, ought to be accounted a lawful Prince, as long as there is no other that can challenge a better right ; for this is agreeable to reason : Where the power of the Possessor doth prevail, and he behaves himself as a good Prince, every man should rather regard the publick Welfare rather than expose it to perpetual Troubles and Revolutions for the sake of an uncertain Governour ; therefore when the People give consent to such an Invader, (at least tacitly) they are really bound to yield them Obedience ; for thus, it is known, the first Cæsars obtained the Empire, yet St. Paul, Rom. 13. attributes a lawful Authority (*ἐξουσίαν*) to them, and that we ought to obey them for Conscience sake : And our Saviour commands us to give unto Cæsar the things that are Cæsar's, when none else could claim a better right : And the Senate and People of Rome, had deserted their ancient right for fear, and want of strength, than as allowing that Dominion : To which purpose was that Statute of Henry the 7th, which provided, that none that obeyed the King (*de facto*) in being, should be for that cause molested or troubled by any process of Law, or Act of Parliament. And that of Nicetas Coniates is to the same purpose, That neither the Emperour that deserts is to be sought, nor he which is present to be expelled, even as in an Hereditary Kingdom where there are two or more Competitors, while the Contest depends, and is not determined by Treaty or Arms, it is most safe to obey him that is in possession. To this also agrees that Defence of Cassius, that sided with Niger against Severus, as Zephiline Epir. Dionis. and Zonarus Tom. 2. relate it, I neither knew you nor Niger, but being found in those parts did not oppose you, but Julian; and seeing I endeavoured the same thing as you did, I have not offended you, no, not in this, that I did not afterward come over to you ; for neither would you have any of your Friends to go over to him.

But what is to be done when any one usurps the right of a lawful Prince that is expelled ? What shall a good Subject do as long as the lawful Prince is in being to whom he seems to owe Obedience ? In this case it is determinable, that matters may be reduced to such a pass that it may not only be lawful, but a duty to obey him that is by what means soever in possession ; for although his commands, for want
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of a lawful Power, have not in themselves the force of Obligation, yet the lawful Prince not being able to exercise his Office, it is the duty of a wise man so far to consult his own affairs, as not to abandon the care of his life and fortunes, which, if he should vainly resist the Possessor, and provoke his wrath, he might do without any service to his Country or the ejected Prince: And this some do infer from Rom. 13. where the Apostle enjoyns Obedience not only for wrath, (i. e.) not contumaciously and unnecessarily to provoke the wrath of him that bears the Sword; and therefore for our own preservation we ought to obey, *laissez vous égarer*, the Powers that are in possession; for seeing the Commonwealth cannot subsist without Government, and the Possessor doth supply it, no good Subject ought to give occasion of imbroyling the Nation by new troubles.

But this is the greatest scruple, How the Subject can at the same time be obliged to the Prince *de Facto*, and only in possession, and to the Prince *de Jure* that is put out of possession, when each seeketh the destruction of the other, for although the Subject should swear Allegiance to the Prince in possession, that can no more make void his Allegiance to his rightful Prince, than the right of a Landlord can be made void by an agreement between his Tenant and a Robber to alienate the Landlord's right. It is the opinion of Grotius, l. 1. c. 4. l. 15. That the Acts of him that exerciseth the power of the Empire, have the vertue of obliging the Subject, not by any authority of his own, which is none, but because it is probable, that he who hath the right of Government, had rather have the commands of the Possessor's to be valid, than that the Law and Justice being suspended, Confusion should follow. See Grotius l. 2. c. 6. s. 5. And it is to be presumed, that every Prince hath so much Humanity, that he would rather have his Subjects preserved by whatsoever means, then by striving in vain, and shewing their impotent affections out of season, to be destroyed without any good effect; Compare 2 Sam. 15. 25, 26. and 1 Kings 3. 26. Thus in Livy, The Romans being desired by the Petellines to give them assistance, declared, that they could not protect them who were so remote from them, advising them to return home and consult for their own safety. See also the Oration of Ferdinand, flying out of Naples, in Guittardin, l. 1. near the end: In this case nothing appears more probable, than that if the lawful Prince be reduced to such a condition that he cannot afford such defence to his Subjects as he ought, and the strength of his Subjects is not so great as to resist the Invader, without evident destruction, it may be presumed that the expelled Prince doth so long release the obligation of his

Subjects until there be a way opened for the regaining his Kingdom, and such as is necessary for their preservation, and to avoid destruction; and thus far only the Faith promised to the Invader seems to oblige. So that this Faith is only temporary and expires when the lawful Prince hath an opportunity to recover his right: And this Faith proceeds not from any intrinsic obligation of the Conscience, which is under a present fear. See Grotius l. 3. c. 7. §. 6. Yet where an external Right and Dominion is admitted, I see no cause why an external Obligation, which doth not touch the Conscience, may not also be admitted: See 2 Kings 11. 2 Cron. 23. on which place Hobbs rightly observes, that Athaliah was justly cast out of the Government, not by any right that the Priest had, as a Priest, but in right of the Child that was to succeed as King. All which things being considered, there is scarce any case wherein private men may oppose an unjust Possessor of an Empire, especially considering (what experience doth shew. (*viz.*) that by such Conspiracies the Invader is more exasperated to oppress the people. See *Justin* l. 16. c. 5. at the end.

The only thing considerable in this Discourse is, whether such Subjects as have been deserted and left in confusion by their King, are bound to reserve and pay their Allegiance to him in case he should return, or whether they are bound by their former Oaths to assist him in the recovery of his Dominions? To which I answer, That the case seems much like, as if a man living in a City among his innocent Neighbours, should set his own House on fire intending thereby to destroy his Neighbours Houses, and though he flies for this fact, yet still employs his Agents and Bouffeurs to continue that fire to an utter destruction of the whole City: Whether are the Citizens in reason or conscience obliged to receive such an ill Neighbour, or to confide in him? The resolution of this case, will be a good answer to the Doubt proposed, of which I shall speak more hereafter.

As to the Original of the *English* Government, it is evident, that the *Saxons*, who subdued the *Britains*, were descended of the *Germans*, who were governed by such Kings as had their *Comites*, (*i. e.*) Counts or Companions who were to hear and determine the Grievances of the people, complained of against their Kings: and *Edgar* the First was chosen by such Counts to be their Monarch, and to defend the Rights of the people, as *Wigorniensis* p. 355. Nor can it be thought consistent with the

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Divine Goodness and Wisdom, that he should ever set up such an order of Men (their corruptions and passions being considered) as should have an uncontrollable power to kill and destroy whom and as many as they pleased, the end of Government being the Welfare of the people, and the Magistrate being appointed to be the Minister of God for the peoples good.

Sir Orlando Bridgman, in his Speech to the Grand Jury of Middlesex, p. 12, 13. says, *That the Crown of England is an Imperial Crown, as depending on no Earthly Potentate but on God only; yet it is not so Absolute (says he) but that the Subjects, as to their Properties, Liberties, and Laws, have as good a right as the King.* And Sir Tho. Smith, Privy Counsellor to Q. Elizabeth, distinguisheth between the Concessions which the King makes, *That they are either of Right or of Grace: The way of asking any thing in Parliament is by Petition, yet the Petition of Right in K. Charles the First, shews that the people had a right to the things they petitioned for; and they have undoubtedly a right to petition for the confirmation of their Rights when they have been invaded; and hence it is that Bracton, l. i. c. 17. says, Superiores habet Rex Deum & legem per quam factus est Rex item Curiam suam Comites & Barones qui eum viderint Regem sine fræno frænum sibi ponere tenentes.* And Chancellour Fortescue tells Hen. 6. *That the King cannot alter the Laws of his Kingdom, for he governs his People not only by a Regal but a Political Power; when it is said the Princes Will hath the force of a Law, this (saith he) is to be understood of a Regal or Absolute Power, from which a Political Power much differs, for such can neither change the Law, nor charge the People with new Impositions against their Wills.* And Bracton, l. i. c. 2. *Leges Anglicanæ cum fuerint approbatæ, & Regis Sacramento confirmatæ mutari non poterint;* and he adds, l. i. c. 17. *Temperent ergo Reges, Reges potentiam suam per legem quæ est frænum potentie,* Let Kings therefore restrain their Power by the Law, which is the Bridle of their Power; and l. i. c. 8. *Rex in justitiâ recipiendâ minimo de populo comparatur.* The King in receiving Judgment is compared to the meanest of his People. Claudius Sefil a French Historian says as much of their Kings, *That the Parliament was set as a Bridle to him, though they have now cast it off.* Judge Jenkins says to this purpose, *We do hold only what the Law holds.* The Kings Prerogative, and the Peoples Liberties are both deter-

determined by Law; and *Charles* the 1st in his Declaration at *York*, says, *That his Prerogatives are built on the Laws of the Land*: And when the Parliament would have him grant an extraordinary Power to the Lords Lieutenants, he tells them in his Answer to both Houses, *That if they would have him to grant more Power to those Lieutenants, than by the Law of the Land was in the King himself, it was fit that the same should be by some Law first vested in him with a Power to transfer it.*

And Judge *Jenkins* says, (speaking of the Oath of Supremacy) *We do not swear that the King is above all Law, nor above the safety of the People; but his Majesty and we will swear to the contrary, the Law and Safety of the People are his Honour, Safety, and Strength.*

As to the Objection made from the Declaration, viz. *That it is not lawful on any pretence to take Arms against the King, &c.* from the Statute 13 of Ch. 2d, c. 6. *That it is unlawful for the Parliament to levy War offensive or defensive against the King.* Tho' that be not much to their case who did not take up Arms against him, or those that were duly commissioned by him: There is a full answer given by the Earl of *Clarendon*, to Mr. *Hobbs*, who extended the King's power beyond the Law, *In dangerous circumstances* (says he) *men are not to resort so much to the words of Submission, as to the intention of the Lawgivers, which could not be, that the Prince should have power to take away the lives of his innocent Subjects, nor could such a Submission be ever supposed to be the mind of the Contractors.*

For suppose that the late King had come armed with some *Irish Papists* into the House, while that Parliament sat, with a purpose to destroy them, would they tamely have submitted, and kept their Swords by their sides, when the Swords of the *Irish* were aimed at their Throats? If such a case had been proposed, they would never have made such a Law as should be written in their blood; and therefore that Law must have some other interpretation, such as this, *That a Defence against illegal actions committed by persons that are not qualified by Law, is not levying War against the King: for if any one, or many be sent to take away my life without a due Trial, he is not sent by the King, for the Law is the King's authoritative Command, and that alloweth me a fair Trial for my life, which if it be denied, I may and ought to defend it against all such as come to take it away contrary to Law.* And the

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Magna Charta declares such Commissions to be null, where the words are, *That neither we, (i. e.) the King, nor our Heirs shall procure or do any thing whereby the Liberties hereby granted shall be infringed, and if any such thing be procured, it shall be of no force.* Now the Liberty granted *Ch. 1.* of that Charter, is, That no man should be punished or condemned but by Trial; *Per Sacramentum proborum & legalium hominum de vicineto*; that is, by a Jury of honest and lawful men of the Neighbourhood: And this privilege was purchased by the fifteenth part of the Subjects Goods, and so becomes their Inheritance; it is *Libertas multoties emptā*: If we may resist a person that is not qualified by Law, though he act a thing that is just, much more when a person that is not qualified comes to act an unjust thing; for no man can want authority to defend his life against him who wants authority to take it away. And not to resist in such a case, is not only against the Law of Nature, but against our own Law, which always intends the good of innocent persons; but such a Law would destroy the foundation of all our other Laws, and the Government itself, for it would turn a Limited into an Absolute Monarchy.

To make a Commission valid, first the person that grants it must have just authority. 2dly, The person commissioned must be legally qualified. 3dly, It must be for the execution of a lawful action; and *malum ex quolibet de seculo*, the want of any of these renders the Commission illegal; for the King himself hath no authority to grant Commissions against the rules of the Law, for the executing of his own Will; nor can any one execute such a Commission without Law, but he is in danger of being judged by the Law: And hence it is, that the Acts of Pardon and Indemnity are extended to such as under *Charles* the First and Second, acted by legal Commissions, because they might have done in the heat of War, what might have been judged Criminal in times of Peace.

St. Paul himself was much moved, and shewed a kind of Resistance when he was but gently at the Command of the high Priest, because it was contrary to Law: And Bishop Hall in his practical Cases, *Decad. 2. Case the First*, says, *If a Thief rob me of my Treasure and flies, my Conscience would not strike me if I pursue him, and so strike him that he dies*; and our Law hath provided for the indemnity of such as slay another *se defendendo*, as in the Case of *Simpson*, mentioned by Sir Edward

Edward Cook in the fourth part of his Reports, p. 333. when one would have seized him and carried him away, was slain in the Attempt by *Simpson*; it was adjudged to be done in his own Defence, and found a chance medley, and *Simpson* was acquitted: And by the like Reason, if a multitude of Armed Men that have no Authority, or are not qualified by Law, do assault me to take away my Life, or my Goods, I may resist them; and as every Constable in case of an unlawful Riot, hath power to suppress the Riotous persons, so hath every private person against such persons as assault him contrary to the Law; and *a fortiori* much more a Community of Lords and Commons against an Army not qualified according to Law.

Mr. Sberingham who most rationally defended the Power of our Kings, doth grant, *That those Laws which are made for the benefit of the Prince and People are fundamental, and cannot be altered without the Ruin of the whole Building; if therefore any Law or Declaration in favour of the Prince against the People, or of the People against the Prince shall be made, it destroys the fundamental Laws, and is invalid.*

Among the Laws of King *Edward*, c. 17. *De Regis Officio*, The Liberties of the People being mentioned, it is said, *That the King is constituted for the preservation of them*, which if he do not, *nec nomen Regis in eo constabit*, he shall not retain the Name of a King: And *Bracton* says, l. 2. c. 24. *Est enim Corona Regis facere Justitiam & Judicium pacem tenere, sine quibus consistere non potest nec tenere, (i. e.)* The Crown of the King is to do Justice and Judgment, to preserve Peace, without which he cannot subsist; and to this purpose is that which *Matthew Paris* mentioneth, fol. 563. of the London Edition, *Comites Cestrie Gladium Sancti Edwardi qui Curtain dicitur ante regem baucantes in signum quod Comes Palatinus regem si oberret habet de jure potestatem coercendi*, That the Earls of Chester carried a Sword which was called *Curtain* before the King, to signify that when the King did err that Earl had a Power to restrain him; and that Parliament that deposed *Richard* the 2d did refer to a known Statute, which they told him was not long since put in practice, whereby it was provided, *That if the King through a foolish Obstinacy and contempt of his People, or any other irregular way should alienate himself from his People, and would not govern by the Laws of his Kingdom made by the*
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Lords of the Kingdom, but should exercise his own Will; from whenceforth it was lawful for them with the consent of the People to depose him from the Crown: Which Law was not denied, nor indeed is it extant totidem verbis, though it be implied in the Charter of King John, where Liberty was granted the Lords and Commons in such cases to seize his Dominions; and only to take care of the Persons of the King and Queen in a private Capacity. And by the 24th Article against that King, it was alledged, That he had caused the Records and Rolls concerning the State of the Government to be erased and embexelled to the great detriment of the People, and disherison of the Crown. And the Author of the Mirror, p. 8. speaking of the rise of our Monarchy, says, That when 40 Princes chose one King to Reign over them, to govern the People of God, and to maintain the Christian Faith, and defend their Goods and Persons in quiet, by the rules of Right; and to be obedient to the rules of Right; if he did not so, he should loose the Name of a King. These things are sufficient to prove an Original Contract, so fundamental that no future Statute can abrogate it.

For the Common-wealth is still in the condition of a Minor that cannot be forced to stand to Laws made against its own benefit: And *Constantinus Leo* in the *Bizantine History*, says, *That the end of a King is the general good, which if he perform not, he is but the counterfeit of a King: And Theodosius Junior in the Institute, l. 1. Titul. 24. says, The Prince is bound to the Laws on which his Authority depends, and to the Laws he ought to submit: And submitted they have, not only since the Norman Kings came to the Crown, but long before, as hath been shewn; which Oaths do as much bind the Consciences of the Kings, as of the People, and so it hath and must be acknowledged notwithstanding any Dispensation of the Pope to the contrary; it was a good King that said, He shall not ascend to God's Holy Hill that keepeth not his Oath and Promises.*

For by an Oath Gods Honour is given as an Hostage for the performance, and though a King were surpris'd in giving such an Oath, as *Joshua* was by the *Gibeonites*, yet is he bound to the performance, and so it seems are his Successors; for when *Saul* acted contrary to the Oath of *Joshua*, God avenged it on him, 2 Sam. 21, 12. *Old Flata* speaking of the King's Oath, says, *Ipse ad hoc specialiter ex virtute Sacramenti obligatur, & ideo Corona insignitur ut per judicia populum sibi commissum regat.*

Tho. Walsingham's Hist. Angl. p. 193. relates the Coronation of Richard the 2d, that the Archbishop with the Marshal of England going before him, declares to the People from one part of the Scaffolds to another, that the King had taken the Oath, and asks them if they would consent to have him their King and Liege-Lord, to which they Answer, *they would*; the breaking this Oath was one great Article against him. And 15 of Edw. 3d Stat. 1. *We considering how by a Bond of our Oath we be bound to the observance and defence of the Laws and Customs of the Realm, and in the 20th of Edw. 3d 'tis expressed more largely, We perceiving that the Law of the Land which we by our Oath be bound to maintain is the less well kept, and the Execution of the same disturbed, we greatly moved in Conscience in this matter, desiring as much for the Pleasure of God, and Ease of our Subjects, as to save our Conscience, and to keep our said Oath, the like is in the Statute of Provisors; so in 3. Rich. 2. The King, says he, was bound by Oath to pass a new Bill brought to him against Extortion, 6. Hen. 6. c. 5. By reason of our Regality we be bounden to the safeguard of our Kingdom. So that how light soever the late King esteemed his Coronation Oath, these ancient Kings in those dark times of Popery, thought themselves strictly bound to the performance of them; and the Nobles did retain so much Power in their hands, as to enforce their Kings to the observation of them. King James told his Parliament March 21. 1609. That the King is bound by a double Oath to preserve the Laws tacitly, as being King, and so bound to protect his People and the Laws, and expressly by his Coronation Oath: So as every just King is bound to observe that Paction made with his People by his Laws, framing the Government thereunto; and a King leaves to be a King, and degenerates into a Tyrant, as soon as he leaves off to govern by Law, in which case the King's Conscience may speak to him, as the poor Woman to Philip of Macedon, either govern according to Law, or cease to be King. And elsewhere he said, If he should not keep the Laws, *rawhich* he was Sworn, he should be Perjured.*

And by what reason can a man be obliged to observe his Oath to a person that being mutual obliged to him, hath notoriously violated his Oath, and becomes a perjur'd Person; it is well resolved by *Amsius de Juramento, l. 4. c. 22. Quum aufertur ratio Juramenti, Juramentum cessat ratione eventus, Quis casus est eorum qui Juraverunt se obediuros domino aut principi u-*
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licui qui postea cessat esse talis. When the reason of an Oath doth cease, the obligation of the Oath ceaseth also, by reason of the event, which is the case of such who have sworn to obey a Lord or Prince, who afterward ceaseth to be so.

King John's Confirmation of an Original Contract. Anno 1214. upon granting the great Charter, and that of the Forest, it was enacted at *Running-Mead*, That 25 Barons should be elected as Conservators of the Liberties thereby granted, who upon Violation of them might (no redress being made within 40 days after notice) enforce the King by seizing his Castles and Lands, and as a Security, the four chief Captains of the Castles of Northampton, Kenelworth, Nottingham, and Scarborough were sworn to the Barons, and that none should be placed in them, but such as the Barons thought to be faithful; and also the Castles of Rochester and others which of right belonged to the Archbishop of Canterbury were delivered up, and others to the Barons. But the King by help of some Forreigners regain'd them all, and was Master of all England, except the City of London, whose Suburbs he burnt. And then the Bishops and Barons swore at St. Edmonds on the high Altar, That if King John did not observe his Grants, they would compel him to it by withholding their Allegiance, and seizing his Castles; and when the King would not restore their Liberties, and Properties, they raile an Army under Robert Fitz-Walker, and regain all their Castles, enter London, and resolved never to desist until their Charters were better secured. The King being generally forsaken, having not above seven Knights with him, whereas the Barons and Knights were reckoned 2000. besides Esquires of good Note: He sent to the King of Morocco, offering the Kingdom to him, who having enquired into the difference between the King and his People, despised the offer, as *Matthew Paris* relates it. He offered it also to Pope Innocent, to be made Tributary to him, if he would excommunicate the Archbishop of Canterbury, and the Barons, that he might be revenged on them; all which notwithstanding they maintain the War, and they elect Lewis of France for their King, and their Actions were approved by the Peers of France assembled at Lyons.

I have read, that in the Clause of the Charter confirm'd by H. 3. it was provided, that if the King should invade those Rights, it was lawful for the Kingdom to rise against him and do him what injury they could, as owing him no Allegiance. And much

to this purpose is quoted out of King John's Charter in these words, *Et illi Barones cum communia totius terræ destrignent & gravabunt nos modis omnibus quibus poterint scilicet per captivem Castellorum terrarum possessionem & aliis modis donec fuerit emendatum secundum arbitrium eorum.* And the practice of the Nobles and Commons in those days do evidence, that they had some such Grants from their Kings for their justification, and perhaps much more then doth now appear; for it was made an Article against Richard the Second, *that he had crazed and imbezled the Records, to the great damage of the People, and the disinberison of the Crown.* But this King Henry the Third, upon a grant of the thirtieth part of his Subjects Goods, ratified their Charters, and Swore to preserve them inviolably, as he was a Man, a Christian, and a King, crowned and anointed; and the Archbishop of Canterbury, with the other Bishops, denounced a Sentence of Excommunication against all such as should invalidate the Priviledges granted by the Charters, throwing down on the ground the lighted Candles which were in their hands, and saying, *So let every one who incurs this Sentence, be extinct in Hell.* And here I cannot forbear to repeat that Article of the *Magna Charta*, which yet appears in the original Grant or Confirmation, which the Bishop of Salisbury says, he hath in his own hands, under the great Seal, (*See the Bishop of Sarum's Pastoral Letter, p. 27.*) whereby it is provided, *That in case the King should violate any part of the Charter, and should refuse to redress what he had done amiss, it should be lawful for the Barons and the whole People of England, to distress him by all the ways they could think on, such as the seizing on his Castles, Lands and Possessions, provision being only made for the safety of the persons of the King and Queen and their Children.* Now this being a fundamental Law and Contract, and never repealed, may abundantly justify all that hath been done by the People of England in the late Revolution. For whereas it is objected, that the late Laws and Declaration, *That it is not lawful on any pretence whatsoever, to take up Arms: and that it is unlawful for both Houses of Parliament to levy War offensive or defensive against the King, and the Recognition made the first of King James, do supersede all former Laws;* I answer, That such fundamental Laws cannot be abrogated, without a particular recital of them, and an express abrogation; so that those Laws mentioned in the Charters for the restraint of illegal Actions, and those that

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gave the *Heretochs* the power of the Militia, and Officers by Sea and Land, not being particularly repealed, cannot be arrogated by those hasty Acts which have been since made; for though the Militia be by those hasty Acts granted to the King, yet it must be understood, that they were so granted in trust and confidence that it should be employed for the protection and safety of the People; and Sir *Edward Cooke* in his Institutes, on *Magna Charta*, alloweth, that the King hath no power over the Militia, to Muster his Subjects, but only in such cases and in such manner as the Parliament by special Acts hath prescribed; and therefore those *Heretochs* or Lord-Lieutenants which had the power of the Militia, for the word *Heretoch*, by *Selden* in his *Titles of Honour*, p. 603. is compounded of *Here*, which signifies *Exercitus*, and *Togen ducere* signifies *Dux exercitus sive navalis sive terrestris*, and signifies a Commander of an Army by Sea or Land. See *Spelman*, p. 232, 348.

That the Sheriffs of every County who had the *Posse Comitatus*, or the power of raising the Militia, were to be chosen by the People in the County-Courts, is evident by express words of King *Edward* the Confessor's Laws, *Cap. de Heretochiis*, as *Lambard's Arch.* p. 135. and Sir *Edward Cooke*, 3 *Edw.* 3. c. 17, 19. And by the Articles against *Richard* the Second, charging him, that he put out divers Sheriffs elected by the Freeholders, and put in his own Favourites, subverting the Laws contrary to his own Oath and Honor. And Anno 1261. the Barons by virtue of an Ordinance of Parliament made at Oxford, 45 *H.* 3. made Sheriffs in divers Counties, and called them Guardians of the Counties, discharging them whom the King had made. *Novos repulere virilitur Vicecomites*. And in the 28th of *Edw.* 1. *ch.* the King granterh to the People, as of right, that they shall have the Election of the Sheriffs. And *ch.* 13. for as much as the King hath granted to the Commons the Election of Sheriffs, the King wills, that they shall chuse such Sheriffs that shall not charge them, &c. And Sir *Edward Cooke*, on *Magna Charta*, proves, p. 147. &c. that the right of electing Sheriffs was anciently in the People, as it was and is in London, York, Bristol, Gloucester, and in all great Cities which are Counties, and in Middlesex. And generally all the great Officers of the Kingdom were chosen in Parliament. So were the *Heretoches* or Lord-Lieutenants in every County chosen by a full *Folkemote* in every County

County of the Realm. And it is evident throughout our Histories, that the Kings of *England* never did or could raise or maintain a War without the consent and aid of their Parliaments. *Anno 1242. Henry* the Third summoned a Parliament, requiring their aid for a War against *France*, to which he had sworn for recovering of his Rights, but they answered, *That they would grant no Aids, nor make any War, till the Truce with France was expired*; and though he clostured the Nobles one by one, and by persuasions and threats sought to ingage them, yet they answered, *That they admired, that without their Counsel and Consent, he would undertake so difficult business*. So that unless the Nation by their late Acts did intend to destroy all their ancient Rights and Liberties, we cannot suppose it to be their sence, but that their General Rules might admit of some Exceptions and Restraints.

Suppose a King, persuaded by Evil Counsellors and detained by them, do break his Soleran Oaths, raiseth a War against his Kingdom, for subversion of the Laws and in defence of such Counsellors as persuaded him thereunto, do appear in their Army where his person is in danger, whether may the Subjects raise Arms and fight against such an Army wherein the King is personally ingaged. *Ans.* This was the Case of *Henry* the Third, who, with his Son Prince *Edward*, was taken Prisoner in the Battel of *Lewis* by the Earl of *Leicester*, who, to countenance his designs, carried him about as a Prisoner; whereupon the Nobles raised an Army, and in the Battel of *Evesham* slew the Earl, and the King himself was wounded nigh to death, as *Matth. Paris* relates, yet in a Parliament at *Winchester*, *Anno 1266.* the Earl and his Army were adjudged Traytors and Rebels, and the Nobles and their Army were rewarded.

If the Owner of a Park grant to a Keeper a Lease thereof for Life, the Condition, though it be not expres'd, yet by Law is this, that if he suffer the Deer to be killed and destroyed through his neglect, or their Pasture eaten up, he forfeiteth his Grant, in the judgment of the Common Law. And though such a Keeper, to preserve his Deer, do wound or kill the Robber, he is held guiltless by a Statute of 21 E. 1. as *Rastal of Forrests*, 19. and *Stamford's Pleas*, l. 1. c. 5, 6. Doth the Law take care for Beasts, and not for Subjects, and are not these much better than they, or their Goods, Liberties, and Properties, than the Grafs for Deer? Some

Some Kings have been so hardy as to ingage themselves in single Tilts and Combats with their Subjects, to shew their Valor, as *Henry the Eighth* did in the sixteenth Year of his Reign, against the Earl of *Suffolk*, wherein the King was like to be slain; and *Henry the Second of France*, Anno 1559. was slain in a Just by the Earl of *Montgomery* his Subject, whose Spear pierced through his Eye to the Brain; but these being provoked thereunto by their Kings, were not adjudged Traytors, having no design of evil against their Kings. So that if a Prince voluntary ingage himself in an unnecessary Combate with his Subjects, and they in defence of their Laws, Liberties, and Lives, do chance (not intentionally) wound or slay their Prince, I see not but they are as excusable as the others, the blame lyeth on the wilful assaulter, and not on them that defend themselves. *Charles the First*, King of *France*, fell distracted in the head of his Army, and slew some of his Souldiers; whereupon they disarmed him, and kept him close prisoner as a *Bedlam*, till he was recovered, nor were any questioned as Traytors for so doing: The Case seems not much unlike to that of *Walter Terril*, who shooting at a Deer, by a casual glance of the Arrow, slew the King, *William Rufus*.

Thus in cases of Manslaughter, when one kills another *se defendendo*, a Pardon by Law is granted of course. It appears, that *David* offered to assist the King of *Achish* in his Wars against *Saul*, wherein *Saul* was slain, by which it may also appear, that an oppressed Subject may assist a Prince that gives him protection in a lawful War against his oppressing Sovereign, though the Sovereigns life be in hazard of being destroyed in that War. This will appear in the Case of *Saul* and *David*.

Saul was Father-in-Law to *David*, who was appointed by God to succeed him in due time, for which cause among others it is probable that *Saul* hated him, especially because the People extolled *David* above him; *Saul* hath slain his thousands, and *David* his ten thousands, and sought occasion to slay him, and to make void his Right of Succession, of the Truth whereof *David* being informed by *Jonathan*, he got about four hundred Men as a Life-Guard; seeing he could not confide in the Promises of *Saul*, and *Abiathar* the high Priest, complained of the Tyranny of *Saul*, that he had commanded

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the Priests of God to be slain upon the Accusation of *Doeg*, and *David* entertains *Abiathar*, and such as fled to him for refuge, 1 Sam. 22. 23. *Abide thou with me, fear not, for he that seeketh thy life, seeketh my life, but with me thou shalt be in safety.* Hereupon he with his Men got into *Keilab*, and *Saul* raiseth his People to assault him; but *David* enquireth of the Lord, (intending no doubt to make resistance against *Saul*) whether *Saul* would come against him, and whether the Men of *Keilab* would deliver him up to *Saul*, and being answered, that they would, he leaves *Keilab*, and flies into the Mountains, where, doubtless, if *Saul* had assaulted him, he would have defended himself; but being too weak, *Saul's* Men being more than six to one, he roves up and down as he could, and to shew that he only sought the defence of his own Life, not the destruction of *Saul's*, he spared it twice, when it was in his power; and was persuaded by his Men to have taken it away, to whom he thus answers, 1 Sam. 26. 10. *The Lord shall smite him, or his day shall come to die, or he shall descend into battle and perish, (i.e.) he will assault me, and may perish in that attempt which he wilfully attempting may be slain, and then I shall be innocent, but if I should slay him in cold Blood, and with an intention to destroy him, I should be guilty; nor was David affrighted from joyning himself with the King of Achish in a Battle against Saul, in which Battle Saul perished, which was more than his self-defence, that so Saul's Army might be weakned, or diverted from the pursuit of him.* Whence it follows, that although we hold the King's Person be inviolable, yet if he shall unjustly expose himself in a War to destroy his Subjects, they may justly raise an Army to defend themselves, and though the King should casually perish, they are innocent. The Blessing pronounc'd by *Amasai* on *David*, shews Gods approbation of his intended Defence, 1 Chron. 12. 18.

It follows also, that a Prince in such a case as *David* was, may joyn himself with the Enemies of his oppressing Sovereign, which, doubtless, will hold in the case of our present King's uniting himself with the confederate Protestant Princes in Defence of their Religion, Laws, and Liberties, which are in danger. *Albericus Gentilis*, Professor of Civil Law in Oxford, under Queen *Eliz.* distinguisheth of a threefold lawful Defence, 1. *Necessary*, 2. *Profitable*, 3. *Honest*; and says, *He*

is necessitated against whom an Enemy comes Armed, or prepares Arms, on which the War against Mithridates was accounted just, because of his preparations, which their Adversaries accounted a moral Declaration of War than any words. *Pis arma quibus nulla nisi in armis relinquatur spes*: He who would keep himself out of Danger, must meet and prevent it, which is a point of greater Wisdom and Courage, than to expect it and revenge it; it is also more safe and easie to prevent a future, than to redress a present Evil. *Turpis ejicitur quam non admittitur Hostis*: We presently slay a Serpent at sight, not staying till he hurt us; and suffer not noxious Weeds or Thorns to grow up, but grub them up by the roots while they are young: if we expect the first stroke it may kill or disable us; *Venienti occurrere morbo*, is good advice to a body politick as well as natural: If our Adversary have declared his will, and is preparing a power to hurt us, we may not tarry to receive the first blow, but anticipate the evil, as *Gladiatores* are wont to do: Yea, it hath been always practised, to put a stop to the ambition of great Monarchs, who have unjustly invaded one Man's Dominions, lest he should attempt the like upon others; and hence the Princes of *Christendom* have been careful to preserve an equal balance between growing Empires, *Possere nocere sit est quoddam; posse alios perdere perde prior*: We may as justly remove impendent evils, as those that are actually befallen us. The whole World is but one great City, and tho' some part of Mapkind is nearer than others, yet our Charity should extend to all; *Si non homini tantum humanitati*: Thus *Baldus*, and both Civilians and Canonists determine, That it is a fault to omit the defence of another, but of ourselves a treachery. *Siracides Eccl. 4.* Free him to whom injury is done, out of the hand of the Injurious. *Constantine* says, *Isti debet account of the injuries done to others as our own*. And if this be the duty of private men, much more of Princes, and if in the other cases, much more in the case of Religion. Thus *Justin* answered the Persians, That he ought to defend the Christians, whom they would compel to forsake their Religion: Thus *Constantine* helped the Christians that were oppressed by *Maximian*; and *Q. Emilius* assisted the *Hollanders* against the Spaniards, who sought not only to destroy the Protestant Religion there, but having broken down that Pale of Europe, as *Lipsius* called it, they would have extended their Tyranny farther. Dr. Ferne,

pleading the Cause of King Charles the First, grants, *That Personal Defence against the sudden Assaults of the King's Messengers is illegal, tho' the King be present, is lawful, even to warding of the King's blows, and to restrain his hands, and rescue their innocent Brethren out of his hands, as the People did Jonathan from the hands of Saul.* And if a King should joyn with Robbers or Pirates by Land or Sea, the Subjects might lawfully defend themselves, tho' the King were in their company.

It is well known, that the Emperour, the Pope, and almost all the Princes in *Christendom*, do joyn to prevent the ambitious Designs of the King of *France*, insomuch, that they will rather assist *England* and *Holland*, than suffer them to fall into the hands of the *French*: and if *Popish Princes* agree in this, for the preservation of their Dominions from an ambitious and aspiring Monarch, tho' of their own Religion, much more may a *Protestant Prince* for the recovery of his own Right, and for the preservation of the just Rights, Laws, Liberties, and Religion of his Allies and Confederates.

Aeneas Sylvius, If a King condemn the Laws and Subjects all to his Lust, will not the States in such a case depose him and chuse another who shall swear to govern by Law, as reason tells us it ought to be. *Aquinas*, speaking of deposing Tyrants, says, *They are not guilty who do it, though obliged to them by Oath, for he deserves the People should not trust him who transgresseth the Duty of a King.*

Objeſt. The people of *Israel* might as well judge *David* to have abdicated his Kingdom, as the people of *England* King *James*, for great complaints were made against *David* by *Abſolom*, concerning the Misd-administration of Government, and his Adultery and Murther are in the Sacred Record, besides, upon the approach of *Abſolom's* Army he fled out of the Land. *2 Sam. 19. 9.*

Ans. As to *David's* personal miscarriages, they were done in secret, scarce two or three made privy to those designs; whence that expression in *Pſ. 51. Against thee only have I sinned*; intimating, that it was not known to his people. So *Nathan* told him, *2 Sam. 12. 12. Thou didst it secretly, but I will do this before all Israel.* And *Uriah* being dead, and his Wife consenting, there was none against whom *David* had sinned, (as some do Comment) but these personal sins did not make him obnoxious to the censures of his people: As for the Administration of the Kingdom, it was a forged Accusation of *Abſolom*

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lom to steal the hearts of the people from his Father; for the Holy Ghost beareth witness to the contrary, Ps. 78. ult. He fed them according to the integrity of his heart, and ruled them prudently with all his power.

And Absolom's Conspiracy was secret and a sudden surprize; the men that followed him went in the simplicity of their hearts, not knowing the intended Rebellion. Besides, the War against David was most unnaturally raised by Absolom his Son and Subject, moved by his declared Ambition, 2 Sam.

15. 4. *O that I were made judge in thy land;*

And altho' it be said that David fled out of the Land; that was only for the convenience of his Army that came to his succour, 2 Sam. 17. 24. whom he conducted over Jordan to Mahanaim, a fortified City on the Borders, that had Walls and Gates; nor did his people desert him, for he had a numerous Army, and great Commanders; Captains over Thousands and over Hundreds; and with him were the Priests that carried the Ark; for whose safety David was especially careful: and the Wood of Ephraim, where Absolom was slain, and his Army defeated, was near to Jordan, and that part of the River very narrow, for David and his men speedily past it over in Boats. And yet the people had a notion of setting Absolom on the Throne in David's absence, that they might have Justice administered; for 2 Sam. 19. 10. *They had anointed Absolom; and Hushai among the rest saluted him saying, God save the King,* 2 Sam. 16. 16. Yet David retained the hearts of his Subjects, for 2 Sam. 19. 9. *All the people were at strife throughout all the tribes of Israel, saying, The King saved us from the hands of the Philistines, and delivered us from our enemies, and now he is fled before Absolom.* And Zadok and Abiathar the Priests prevailed with Amasa to turn the hearts of all the men of Judah to King David, and as one man they invited him and all his Servants to return.

Object. If God send a wicked Prince for the punishment of the sins of a people, it is their duty to submit to the punishment of their iniquities, as our Church Homelies instruct us; in these words, Homely the first, against Disobedience, p. 280. *For Subjects do deserve through their sins to have an evil Prince, and then to rebel against him were double and triple evil, by provoking God more to plague them: Let us either deserve to have a good Prince, or let us patiently suffer and obey such as we deserve;*

and whether the Prince be good or evil, let us according to the Ser-
 pines pray for him, for his continuance and increase in Goodness, if
 he be good, and for his amendment if he be evil: for, *Reps. quando
 boni muneris est Dei quando mali, ex merito populi.* We may also
Imperatores ubi deus quoscunque voluit. So *Isidore* says,
 And we might quidam wicked Prince as well as *Isidore* on
 Security, which is of God's sending: for there being in Nature a
 Vicissitude of Earthly things, good and evil succeeding each
 other, we must receive evil at the hands of God with as wil-
 ling a submission as we do good things, and the return of good
 things will satisfy for our calm submission to evils: as God
 blessed the latter end of *Jub* by doubling all his enjoyments,
 and as after a short persecution in the *Marian* days the Pro-
 testants enjoyed a long tranquility under *Q. Elizabeth*, &c. and
 as none can, so none ought to resist the will of God.
 And it must be granted, that there is no evil befalls a City
 or a Nation, but it is the Lords doing, either by his permissi-
 on or his commission: but it is as certain, that God not ap-
 proves of all that he permits to be done in the World: and
 when God doth afflict a people for their sins, that which is
 done justly by himself by way of permission, cannot be justi-
 fied by the Agents for want of a Commission:
 y^ely, God may punish a Nation by Fire, Famine, or Sword,
 yet it is the duty of such as suffer under those Judgments to
 pray against them, and by the known rule, *Pro quibus orandum
 pro his laborandum*, they may use all lawful endeavours against
 them: If God permit Fire to destroy my Habitation, or Rob-
 bers to plunder me, it is just with God to deal so with me;
 yet I may and ought to endeavour the quenching of that fire,
 and as I am able, to resist those Robbers; otherwise it would
 not be lawful for Christians to fight against those *Fire* and
Tartars which invade *Christendom* for the destruction of their
 Religion, when, in respect to God, such Invasions are made
 for the punishment of their sins, viz. their unchristian Divi-
 sions and Corruptions of the Doctrine of Christianity. And
 if such a Prince as the King of *France*, moerly for his ambi-
 tion, or for propagating his own Superstition, shall invade the
 Dominions of Protestant Princes, or destroy thousands of his
 own Subjects contrary to his own Edicts, may they not de-
 fend themselves against such unjust Invasions of their Rights
 and Religion? or at least, may they not pray against them, or
 flye.

flye from his furious attempts? And yet this is a degree of resisting him.

Yet the Church of *England* hath not been guilty of these misbehaviours in any of these respects; for as long as the late King continued among us, we continued to pray for him; and the whole Militia were at his command, had he thought fit to trust them.

We followed the advice of *Moses*, even when we had a Howling Wilderness on one side, and a Red-Sea on the other; to stand still; (Deu.) to keep our Nations and duties, waiting for God's salvation, who in due time sent us a *Joshua*, with whom were the Priests of the Lord, and the Ark of the Covenant, to whom the swelling streams of *Jordan* gave way, and opened a passage, and gave us an entrance to our *Canaan*, not only by dry Land, but without shedding of Blood; a Blessing greater than that vouchsafed to *Israel*: And should we like *Sampson* lie still in a dead sleep, and not shake off those bonds (while we are able) by which the *Philistines* would have bound us, and sported themselves in our destruction? When *St. Peter* was imprisoned by *Herod*, Acts 12. 7. God sent an Angel at the Prayers of the Church which were made incessantly for him; at whose presence his Chains fell off, and the first, second and third Gates of the Prison were opened, and the Angel bid him arise quickly and gird himself and follow him; which if *St. Peter* had not done, he had certainly been wanting to his own preservation.

The same Apology which *David* made for himself, may serve for the oppressed but peaceable Subjects of *England*, 1 Sam. 24. 11. 12. Moreover, my father, see the skirt of thy garment in my hand; for in that I cut off the skirt of thy garment, led thee not, know thou and see, that there is neither evil nor transgression in my hands, and I have not sinned against thee; yet thou bindest my hands to take it. The Lord judge between me and thee; and the Lord revenge me of thee; but my hand shall not be upon thee. And vers. 17. *Saul* said to *David*, Thou art more righteous than I.

As for *Tacitus*, though he wrote a Heathen, yet he was a very wise man, and well acquainted with the Constitution of the Roman Government; for by the *Lex Regia*, granted by the Senate to *Augustus*, it was declared, *Quicquid per Epistulam Præsit cognoscimus decrevisse aut prædictum per palatium Lex esse.* And

Cicero,

Cicero, De Legibus Regio Imperio duo sunt—Mittit summum jus habento nemini parento. So Dion of Augustus, *That he was free and of Absolute Authority; both over himself and over the Law, for the Emperor is a Living Law, and commands as much by word as the Law doth by writing.* But we are not under the Laws of the Romans, Turks, or Tartars. And if God should for our sins now, or had he in the late King's reign permitted the French King to invade us with his Dragoons, I doubt not but we might *Vim vi repellere*, resist his Tyranny and Usurpation. And as to the Protestants under Q. Mary, none of them were put to death until she had procured a Parliament to make Laws against them, and then it was their Duty to submit. And we are bound with all thankfulness to bless God who prevented the late King from procuring such a Parliament, and such Sanginary Laws which he had well nigh effected, to the Extirpation of our Religion, Laws and Liberties, and fastning those heavy Yoaks of Popery and Slavery on us and the Posterities that were to succeed us: *This was the Lord's doing, and as it is marvellous in our eyes,* so it ought with all humble thankfulness to be acknowledg'd and accepted.

But it is objected from Sir E. Cooke, *That the Regal Authority is so inherent in the person of the King, that no separation can be made; so that as long as he lives, our Allegiance is due to him and to no other.*

Ans. Whatever that great Lawyer says, the Law says otherwise; for even while a rightful Prince is in possession, the Law makes a difference between his private and his publick Capacity; and as while the King acts by the Laws, we owe him our Obedience; so in those things wherein he acts arbitrarily by his own Will, contrary to Law, our Allegiance is not due in such cases.

Object. We are sworn to the King and to his lawful Heirs and Successors: now as the King while he lives can have no Heir to whom, in his life time, we owe our sworn Allegiance, so when he dies, there can be no lawful Successor but the Heir, if there be any that survives.

Ans. In the sense of the Oath, there can be no Heir till the death of the King; and in our case there is no obligation due from our Oaths to the Heir, until he or she be actually King or Queen of England, as our Law expounds itself. And when the King dies in a natural or civil and political sense, by deserting

setting his Government, and going over to an avowed Enemy to the Nation, their Religion and Liberties, or hath submitted his Kingdom to the Usurpations of the Pope, and so renders himself not only as useless as if he were buried in a Cloyster, but as destructive as an open Enemy, there is in such cases a Demise made of the Crown, and it descends to the Heir.

2ly, In this case, if he that is not the next Heir by Blood, be by the unanimous consent of the people, as well as by the good liking of the lawful Heir, chosen and admitted into the actual possession of the Government, all Rights that were due to the Heir, become due to such a Successor in the eye of the Law: So *Bracton* determines it, *Heredis verbo omnes significari successores & si verbis non sint expressi*.

So *Littleton* in his *Tenures*, Title of *Homage*, Sect. 85. *Allegiance is due to every one (in possession) that becomes King, and to no other*. Judge *Popham* in his Reports, f. 16, 17. mentions a Case to this purpose: *Richard* the Third granted certain *Privileges* to the City of *Glocester*, with a *Salvo* to his Heirs; in *Q. Elizabeth's* reign it was questioned, whether the *Salvo* did pass to her; she being not Heir to King *Richard*, but Successor only; and all the Judges did resolve that the *Salvo* did pass to the Queen.

Grotius, l. 2. c. 9. f. 8, 9. *If a King dye without Issue in an Hereditary Kingdom, the Empire remains in the Body of the People, who may create another, and limit him, the People being sui Juris*. Now in such a case a Convention of the People duly assembled in their Representatives, is the most August Assembly, even beyond a *Parliament*, for to be able to make a King, is more than to be a King: and as the Original of Majesty is fundamentally in the people, a *Parliament* hath a great dependance on the King, being his Subjects, the Convention is Absolute and Independent, it makes bounds for the Monarch; and whereas one *Parliament* may repeal the Acts of another, a *Parliament* cannot alter the fundamental Constitutions of a *Convention*, when it first constitutes a Monarchy. And this hath been the most ancient manner in cases of great Necessity, the people assembled in a *Folk-mote*, in the several Counties, and chose their *Witten-Gemote*, or Meeting of Wisemen.

Object. The King was forced to leave his Kingdom, his Subjects failing to assist him against the Invaders.

Ans.

Ans. The question that comes here to be considered is, Whether the King's departure were voluntary or forced: It is certain that the actions of reasonable men are generally influenced by the proposed end; for, *Omnis vult esse felix: nec potest esse contraarium*; as all men desire to be happy, so they cannot will any thing which they conceive to have a tendency to the contrary.

These two are generally the Originals of Humane actions, viz. Necessity and Choice; and Necessity is either that which we draw on ourselves, or is imposed on us by others. *Pharaoh's Oppression of Israel* was at first voluntary, while he hardened his heart against the Command of God, but when God gave him up to that hardness of heart, though the execution of what he did became necessary, yet the principle that led him to it was voluntarily espoused. 'Tis a Rule given by *Rainaldus*, a good Casuist, *Modo preluceat notitia & absit coactio intervenit voluntarium*: Where the understanding is satisfied concerning any design, and there be no force to withhold the prosecution of it, there our actions are voluntary. The end which the late King had long endeavoured, and with too much success had by many means well nigh effected, was to make *Papery* the established Religion of the Nation: He declared his desire that all his Subjects were of the same persuasion with himself; and his actions tended to make them such: and doubtless he was not willing to have all his labours frustrated; when, therefore, he was reduced to some straits, being such as he wilfully brought on himself, he could not properly be said to act by constraint. But this was not the King's case; that he did deliberate, whether to go or not, appears by his first departure and returning again, and then by departing still under his own Guards a second time, when he was by contrary Winds driven into *Droghda*, he still resolved to quit the Land: So that if the late King had thought his tarrying would have promoted his Interest, he would have staid, but being guided by better hopes of compassing his designs abroad, it follows that he voluntarily, and I may say maliciously deserted us, destroying the Writs for calling a Parliament, concealing the Broad-Sea, leaving us under the power of an Army of *Irish Papists*, whom he ordered to be disbanded without Pay; whereby he probably thought we would have crumbled into several Factions, and fought it out among ourselves.

ourselves. All men count those actions voluntary which were in their power to do or not to do, and though after deliberation the will be for a while in *æquilibrio*, yet when other Reasons and Circumstances are added to make the Scales turn, the Resolution and Actions that follow are our choice.

247. If it had been the present King's Design or Will to have hindered the late King's departure, he might have done it, and perhaps it might have been for his Interest to have so done; but by not doing it, he manifested that it was not his will to restrain him, but the late King's choice; for there was a Treaty offered and accepted by the late King, who sent his Commissioners to treat with the Prince; but being (as by the event it appears) resolved on his departure, he tarried not for the return of his Commissioners; and though he had appointed to meet his own Council in the Morning, yet he deserted them in the Night before; to which, it is said, he had engaged himself by Oath to the Queen. So that all these pretences of his being willing to remain in his Kingdom, were but to facilitate what he was more preëemptorily resolved to do (i. e.) to forsake it. So that tho' the consequents of his own Actions, which were undoubtedly wilful, as his raising a standing Army, which revolted from him, his abrogating the Laws, submitting the Kingdom to the Pope, and all those Grievances summ'd up by the Lords and Commons, Feb. 12. brought a necessity on him to depart; yet seeing that necessity was the effect of his own Voluntary Actions, it must be imputed to his will and choice as the cause of it. And doubtless the King deserted the Nation on some such deliberations as these. He had followed such evil and rash Counsels, as had involved him in unextricable Troubles; his Counsellors were not able to defend him or themselves, and by flight shifted for themselves. The Army, in which he confided, forsook him, the Affections of the People were generally alienated from him; so that the only Refuge that was left him was his trusty Confederate the King of France, to whom he chose to commit himself, rather than to submit to a Treaty.

Object. But it may be Objected, That the Lords and Commons were too hasty in declaring that the late King had Abdicated his Kingdoms, and that they ought to have treated with him, and proposed such Terms, as might have secured their Religion, Laws, and Liberties; so which if he had con-

sented, all our Grievances might have been redressed.

Ans. To this it is answered, That the Parliament, by their Votes against the Bill of Exclusion, had done as much as in them lay to engage him to a Faithful Execution of the Trust reposed in him (*viz.*) To Govern according to the Established Laws. And his Promise to the Privy-Council immediately on his Brother's Death, did manifest what then was, or at least ought to have been his Resolution, for he declared, *That he would make it his Endeavour to preserve the Government both in Church and State as it was then established. That he knew the Principles of the Church of England were for Monarchy, and that the Members of it had shewed themselves good and Loyal Subjects; therefore he would always take care to defend and support it. I know (said he) that the Laws of England are sufficient to make the King as great a Monarch as I can wish; and as I shall never depart from the just Rights and Prerogatives of the Crown, so I shall never invade any man's Property. I have often adventured my Life heretofore in Defence of this Nation, and I shall still go as far as any Man in preserving it in all its just Rights and Liberties.* These were Solemn Promises, to the performance whereof, not only his Honour, of which he boasted, that he never had broken his Word with any Man, but his real Interest should have obliged him; I cannot omit that Observation of *Job, Chap. 34. ver. 30. That God in his righteous Judgment will not that an Hypocrite Reign, lest the People be ensnared.* These were Divine Sentences in the King's Lips, but his Actions declared what was in his Heart, namely, to pull down and destroy all that he had promised to preserve and defend with his very Life, to which the hope of salvation, being then a resolved Papist, so pre-engaged him, that in the persuasion wherein he then was, his conscience must tell him he must perish eternally, if he should perform his promises, God only knows how to treat with such Princes. It was not in the wisdom or power of men to confine such an Angel of light; for if by a Treaty the late King, under the circumstances to which he was reduced, should have yielded to all the demands of his Subjects, his Allies abroad might, whenever they had an opportunity to assist him, have made all void, on pretence, that he was under force all the time of such Treaty. And if he had been readmitted with that freedom, honor and power which became a King of England, who could not foresee, that as long as the

Jesuits

Jesuits had the guidance of his Conscience, he would, a second time have renewed his Promises of establishing our Religion, Laws, and Liberties, only until he found another opportunity to destroy them, to which the Name of a King and his Presence among his Subjects, and the Subtil Counsels and Devilish Arts of the Jesuits, the Credulity of some, and the Discontents of many others, (for under the best Governments there will be Malecontents) would have made plausible pretences and arguments for disturbance of our peace, which our too powerful Neighbour, the King of France, hath for a long time, had encouragement from the late King to do, and only waited for an opportunity, and now declares he will endeavour to effect by open War. Thus Coleman's Letter to Sir William Throgmorton, Febr. 1. 1672. You well know, that when the Duke comes to be Master of our Affairs, the King of France will have reason to promise himself all things that he can desire. And in another Letter to L^d Cheese, that his Royal Highness was convinced, that his interest and the King of France's were the same; and if his Royal Highness would endeavour to dissolve the Parliament, the King of France would assist him with his Power and Purse to have such a new one as would be for their purpose, which was, the subduing of a pestilent Heresie, that had domineer'd over a great part of the Northern World a long time, of which there were never such hopes of success since the death of Queen Mary, God having given us a Prince, who is become (I may say to a Miracle) zealous of being the Author and Instrument of so glorious a Work. See the Collection of Letters, p. 118. So that by what was designed by the Duke and French King, and hath since been jointly and vigorously acted, we have full assurance of a League with France for our utter ruin; and they are Fools or Madmen, that having such clear light and experience to guide them, will suffer themselves to be blindfolded a second time, and be led to destruction. So that what Joab said to David is much more applicable in our Case; *Thou lovest thine enemies and hatest thy friends, for thou hast declared this day, that thou regardst neither the Prince nor his Servants, for this day I perceive that if the King had prevailed, and all they had died, then it had pleased thee well: So fond was David of his Absalom,* 2 Sam. 19. 6.

It is not necessary that abdication of an Office should always be an act of the will. *Lentulus* is said to abdicate the Con-

fulship, because he could hold it no longer, having been one of the Conspirators with *Cailline*; And *Silla* abdicated the dictatorship, thinking to find a better opportunity to be revenged on his enemies; And *Dioclesian* left the Empire because he could not effect his will against the Christians. These were mixt actions, partly through constraint, and partly voluntary, yet were accounted abdications. And our King had involved us in so many miseries, that nothing but his desertion of us or our opposing of him could deliver us, God prevented the latter, and the King granted the former.

Pufendorf de Imperio, p. 272. determines, that if a King abdicates the power of his Kingdom, and be of an hostile mind, or departs from the Rules of governing, (which he expresseth thus, (*Modum habendi potestatem immutare*) that then the ground of the Subjects obedience is made void. And in the Digests, l. 49. *Total. 15. de Capit.* we have this Maxim, *Qui fugit ad eos cum quibus nulla est amicitia a fide suscepta transfugit*; and that the late King hath so done, is an evident truth.

And it is as true, that to desert a Government, rather than to keep it on just and legal terms, is to abdicate it; for an abdication may be as expressly signified by real deeds, as by any form of words whatsoever.

As to the League with *France*, for making King *James* as Absolute as King *Lewis*, and inable him (notwithstanding his Oaths and Publick Declarations to the contrary) to extirpate the Protestant Religion, there wants not sufficient evidence of the endeavours of the Court of *France* for many years together, by correspondence with the late K. while he was Duke of *York*, and assum'd on him the chief administration of Publick Affairs: Nor of a too fond (if not a willing) compliance of *Charles* the Second to that end. Some wise men have thought that the great Revenues granted to the Crown, the declaring the Militia to be wholly in the King, the binding up not only the Subjects but the Parliament by Oaths and Declarations not to resist the King, or those that were commissioned by him, on any pretence or cause whatsoever, by vertue whereof, an hundred Irish or French might have come into the House of Parliament and cut all their Throats, and they not have dared to draw a Sword in their own defence; all which things were against or as far besides the Laws of the Land, as of Reason, and Common Prudence; for doubtless had it been proposed whe-

whether those Laws might have been so interpreted, they would speedily have made an alteration in them.

All these I say have been observed by wise men, to have been the designs of such as designed to introduce an Arbitrary Government, and facilitate the bringing in of Popery, though they that acted did not intend to serve the ends either of *France* or the Crown of *England* so far. On this Errand, was the Dutchess of *Orleans* some years since sent into *England*, to assure *Charles* the Second of the Assistance of the King of *France* in reducing the Parliament to the King's pleasure; to this end were Tolerations and Indulgences granted, *French* Whores admitted, with great power and pomp, and all things so well prepared, though more slowly and secretly in the Reign of *Charles* the Second, that there wanted nothing but *James* the Second's ascending the Throne to give a *Consummatum est* to that design of bringing in both Popery and Slavery upon us. And that being effected too soon alas for *England*, then notwithstanding the Coronation-Oath, the many Publick Protestations to maintain the Church of *England* and the Protestant Religion, and of whose Loyalty he was well satisfied, and that he never desired to be more great and happy than he might be by the established Laws; yet all these were forgotten and trampled under foot, Jesuits and Papists being admitted at Court, and into the Privy-Council, the King's Conscience submitted to their Conduct, the Pope's Nuncio publicly entertained and feasted at the *Guild-hall*, an Ambassador sent to *Rome*, Popish Bishops set up with power of Jurisdiction, Protestant Bishops put into the *Tower*, the Nobles cloistered, and such as would not comply to betray their Religion and Country, were turn'd out of all the chief Offices by Sea and Land, and others put into their room, and in all places of Judicature Judges and Juries were adapted for the prosecution of that design, there wanted only a complying Parliament; and to that end *Quo Warranto's* were issued out against the Charters, and alterations made in them fit for that design; Addresses were procured for taking off the *Test* and *Penal Laws*, (i. e.) for introducing of Popery by Law; an Army of Irish Papists brought in, and another prepared in *France*. So that our destruction was much nearer than we believed.

Monsieur D' *Arvaux*, Ambassador for the King of *France* in *Holland*, in his Memorial, told the Estates, that the Friendship

Ship

ship and Alliance between his Master and the King of *England*, did oblige him to assist the King of *England*, and to look on the first act of Hostility by Sea or Land, as a Rupture of Peace.

Coleman's Letters spake to the same effect, and the event hath demonstrated the truth of all that was thought to be but groundless fears and jealousies; for on the approach of the Prince of *Orange*, these dark mists vanish'd, the Nation awak'd out of their deep slumber, and resum'd their ancient valour and resolution to defend their Religion, Laws, and Liberties against Popery and Arbitrary Government, which seized on us as an armed man. And he that doth not now believe the *French* League, for introducing of Popery and Arbitrary Government, is worse than an Infidel.

Object. But the King forsook the Land because his Subjects had first forsaken him contrary to their Duty.

Ans. The peoples duty was to be governed according to the Law, which is the measure of their Obedience; and they being sensible that the King's design was to subvert the Laws, and to that end had armed *Irish* and *English* Papists contrary to Law, they could not joyn with such men in such a design. The *Papists* themselves alway opposed their Kings, in the reigns of King *John*, *Henry* the Third, and others, that would have submitted the Kingdom to the *Pope*. And if the Subjects had sought for the King in this Cause, they had sought for the *Pope*, and for Slavery, against the Crown and Dignity of the King, against their Religion and Liberties, and against the Oaths of Supremacy and Allegiance, which bound them *pro posse*, as far as they were able, to resist the Usurpations of the *Pope*, by what means soever they should be introduced.

In brief, let this Dilemma be considered, either the King was forced to flye, or else he deserted the Government willingly; if he was forced, then there was a Conquest, and the Conqueror had right to what by lawful Arms he did obtain; if he fled willingly, then there was a renouncing of the Government, that is an Abdication, and so the Crown became void, and our Allegiance to the late King ceased.

Object. But the Subjects of *England* entred into an Association with the *Prince*, and though they fought not, yet were in Arms.

Ans. The *Magna Charta* granted by King *John*, (as well as the

the Law of Nature) and confirmed by many Parliaments, doth warrant such an Association for preserving their Lives, Laws, and Liberties; when they are in imminent danger; and such was the Case of *England* at that time.

Object. If Subjects have Power to resist their Princes, why then did the Primitive Martyrs cast away their Lives, died *Abner* as a fool dieth?

Ans. They had no Laws for establishing their Religion, no Votes in choosing the Senators, the Laws were against them, and their Religion obliged them to submit to the present Powers who had an Absolute Command over them; and if these Christians had such Oaths from their Emperors as we have, it might be well questioned whether they would not have held him to the performance.

Object. If we may not resist a King, acting contrary to the Laws of God, and Nature, then neither when he acts contrary to the Laws of the Land.

Ans. The Laws of the Land do grant to Subjects more particular Rights and Liberties than the Law of God doth, and the Law of God doth not destroy the Civil Constitutions of a Land, which the People may claim and defend; it is therefore observable, that Queen *Mary* did not put any to Death for their Religion, untill she had procured a Parliament that made void the Laws made on behalf of the Protestants, and had reinforced the ancient Laws which were made in times of Popery, and procured new ones against Protestants as Hereticks.

It is a strange account which Ecclesiastical Histories gives of the Primitive Christians, that they were *Candidati Martyris*, offered themselves to their Persecutors, not only when they were accused and brought before Magistrates, but when the *Inimicum vulgus* invaded them, and they might have resisted such as had no Authority against them; it was a Rule with *Tertul.* *Quodcumque non licet in Imperatorem nec in quemquam licet*: By which Rule it was as unlawful to resist a Robber, or Murderer, as the Emperor, and in his opinion, if the Emperor had been a Christian, he might not have resisted any violent person, but he was a *Montanist*, and had his Errors, as in matters of Doctrine, so also of Fact, as in his Account that the number of Christians were sufficient to have vanquished the whole Roman Empire, that it was not lawful to fly

fly in times of Persecution; to which end he wrote a Tract, *De fuga*, &c. which was contrary to our Saviours direction to his Disciples, *Matth.* 10. 23. And in truth, if it be not lawful to resist a Persecutor, neither is it lawful to fly when we are summoned to appear before a persecuting Magistrate, for that is determined to be a kind of Resistance: But the true Cause of the Non-resistance of the Primitive Christians, was that which *Tertul.* observes, *Nos externi sumus*, We are Aliens from the Common-wealth of *Rome*; they had no Laws, no Votes in choosing the Senators, but were accounted of as Out-laws and Enemies to the Government, by their Religion; it was with them, as with such Protestants as live under the Tyranny of the Pope, who being apprehended, and cast into the Inquisition, had neither Power nor Right to defend themselves; but it was their duty to give Testimony to the Truth, by laying down their Lives for it. They were under an Arbitrary Power in the nature of Slaves, and Vassels, and lookt on as Enemies to the Roman State, being of a Religion contrary to what was established; but we are Freemen, that have our Religion and Properties established by Law, and such as act contrary to the Government, resist the Ordinance of God, and oppose it, and may be resisted. And the Oaths by which we are obliged bind us primarily to the Government, and to the Governours for the sake thereof, and if the Government be not Arbitrary, neither is our Allegiance due to one that would govern Arbitrarily. So that suffering for the Faith of Christ, is a distinct thing from suffering for the frame of the Government; for if I may not resist, I am overcome, and yield consent to a change of the Government, (*i. e.*) to an Arbitrary and Illegal Power contrary to the Constitution under which I live, and so promote the ends of an Oppressing and Usurping Governour; and I cannot expect with comfort a Reward from God, for casting away my own Life, and endangering the Lives of many others, when a Government is duly established, God approves of it as his Ordinance, and the People ought by all lawful means to preserve it, for the Gospel of Christ doth no more destroy the privileges of the People than of the Prince, but if the Prince would destroy the Rights of the People, they may contest them; for in vain are Laws made, and Liberties granted, if they may not be defended.

And

And this may serve to answer the Objection concerning the behaviour of the Primitive Christians, who as Bishop *Abbot* observed, when they were armed with publick Laws, and Priviledges under *Constantine*, did not submit, as when they lived under *Dioclesian*, and *Licinius*, but fought in their own Defence, and would rather kill than be killed. From the Death of *Nero*, the Christians until *Constantines* Reign, thought it a great happiness to enjoy their Religion with Persecution; they served the present Emperours, fought their Battles, and took the Military Oaths, though the Emperor made way to the Throne by the Murther of his Predecessor, they disputed not the Title, but did their present duty, as also did the People of *Israel*, under many Revolutions and Usurpations of Government, when the younger hath been preferred to succeed before the elder, and one Prince came in by the violent Death of another: And this was done in Succession of the Priesthood also, for whereas the High Priest was to be of the first born of *Aaron*, who left two Sons, *Eleazar*, and *Ithamar*, it is evident, that that Office was translated from the House of *Eleazar* the elder Brother, unto the Family of *Ithamar* the younger, and so continued for some Successions, until it was return'd again to the House of *Eleazar*, in the person of *Zadok*, *Abiatha*, *vis abdicatione & Zadoci substitutione*, as *Selden de Success.* &c. p. 128. And as to *Annas*, and *Caiphas* mentioned in the Gospels, and the Acts of the Apostles to whom Christ and the Apostle submitted, as to the High Priest; it is evident, that *Annas* was thrust in by *Quirinius* the Roman President; as *Selden*, p. 174. and *Caiphas* thrust himself in by the assistance of *Gratus*, to succeed *Simon*, (*ibidem*) and of them and some others of the High Priests; *Selden* observes from *Iosephus*, *Singuli incedebant stipati manu audacissimorum & sedisiorum hominum*, p. 183. Edit. Londini, 1636.

Object. 1. The Exception from a general Rule must be as evident as the general Rule is. But the Exception, *viz. King James is not the bigger Power, is not as evident as the general Rule, viz. Let every Soul be Subject, &c.* Ergo, the Exception is not good.

Ans. The major Proposition I admit, if by (as Evident) you mean a Moral Evidence resulting from the Nature and Properties of things? but if you mean that the Exception must be as exprelly, and distinctly set down, I deny it. *Do no manner of Work, &c.* is a general Precept, yet cases of Ne-

cessity were always excepted, though not particularly exprest.

Periculum vite So Children Obey your Parents in all things, as a general Precept, yet cases *Estra limitet disciplina*, are excepted. Jestings is not once to be named among Christians, as a general Rule, *Ephes. 5. 4.* Yet Dr. Barrow shews many Exceptions which are not set down in Scripture. The like may be said of that of the Apostle, *Servants Obey your Masters in all things.*

And so the prohibition of eating Bloud admits Exceptions, though not mentioned in Scripture, for cases of extraordinary Nature, of Necessity, and rare Contingency, are not within the Intention of general Precepts, according to that known Maxim, *De raro contingentibus leges non decernunt.*

Thus though the Rule in Scripture be General, and Damnation be the Penalty, yet on good Moral Evidence Exceptions may be admitted. Every one was not guilty of breaking the Sabbath that performed a work of Charity, or relieved his Neighbours Ox, or Ass, or supplied his own Necessities on the Sabbath-day.

2. The Minor may be resolved into two parts. 1st, That the Precept, *Let every Soul*, &c. is a general Precept. 2^{dly}, That King *James* is the Higher Power. To the first, The Precept is General as to the persons commanded, but what degree of Subjection is due, and who are the Higher Powers, the Apostles defines not. The Apostle says (every person) in opposition to Jews and Heretical Christians, who thought themselves privileged, being God's peculiar people from Subjection to Heathen Governours, and he says not, that the Subjection is to be Absolute, and unlimited, (for if this were his meaning, then all Governments should be alike Absolute) so that the Minor should be thus exprest, *Let every person be subject to the Higher Power in such a degree of Subjection, as the particular Constitution of each Nation requireth*; in which sense it will not serve the Hypothesis. And certain it is, the Gospel doth not disannul any legal Constitutions agreed on between Prince and People.

The 2^d part of your Minor is, That King *James* is the Higher Power.

Ans. first, King *James* is not now the Higher Power. A Title without Possession cannot be the Higher Power in this Text, *Rom. 13.* or indeed in any other place. The power here mentioned is a power that hath the Sword, so that tho his Title were good, yet being out of Possession, he is not capable

capable of having this Subjection paid to him ; he hath not now the power of the Sword to punish Evil-doers, and defend the Good, which is the end of Government.

2. Agreeable hereunto, a bare Title tot he Crown, when another is in Possession, doth not make our *Seignior L'Roy* in the Eye of the Law, in which point our Law Books are clear, which Books being never Censured, but Licenced, (although the Government hath at all times been careful to censure and expunge such Tenets as might prove dangerous to the Government, as was ordered to be done by the Lord Cook's Reports in King James's Reign) are thereby approved by the Government.

3. If a just War may extinguish a Right, then King James his Right is extinguished, but a just War may, &c. Ergo, The Minor is apparent as all political Writers, and many Instances in Scripture do assert. The Sequel is clear, because nothing is wanting to make this War against King James lawful, and capable to extinguish a Right: The War was justly undertaken by the present King, and King James submitting to his Arms is apparent, which is enough to extinguish his Right, had he made no other Forfeiture thereof.

4. Seeing the Apostle mentioneth the power in the Abstract, he seems to intend the Government, and the person that was Governour *de Facto* ; for as Peter Martyr on the place, *Non anxie disputandum quo jure quare injuria Principes adepti sunt suam potestatem, illud potius agendum est ut Magistratus presentes revereamur.* And as Bishop Morton says, *As soon as Princes are established, whatever they be they may not be established, for as soon as it becomes *Christi auctoritas*, it is *Dei statum* God's Ordinance.* And if Nero were indeed the Emperor *De Jure*, the Senate shewed how little subjection they owed him, when as soon as he withdrew himself, they adjudged him an Enemy to the Commonwealth, and sentenced him to die more *Majorum*, (i. e.) to be fastned to the Earth Naked, by a Fork on his Neck, and to be beaten to Death with Rods, as *Suetonius* relates, in *vita Neronis*, S. 49. and therefore the Apostle seems not to intend the person of Nero, but the Roman Government, not deciding whether it were in Nero, or the Senate.

5. There is another Exception to the Second part of the Minor, viz. King James was never the higher Power, so as to have it solely in himself, some part of it was in the Parlia-

ment, which had a Negative in the Legislation ; and as to the Executive part, the Judgment of matters of Fact was in the People, *viz.* in Jurors, and the Election of Sheriffs, and anciently the disposing of the Militia, and many great Offices both by Sea and Land, and the Judicial part was left to the King, confined by certain Methods, the King in Person not being able to decide the least Cause.

3. I thus except against the Minor. The subjection required in the Text is due to the King's Person, for the sake of the Power, and therefore is not to be extended farther than the Power wherewith he is invested, and with a *Salvo* to that part of the Power which is vested in another; so that we owed no such subjection to King *James* as did derogate from another's Right, beyond the extent of his own Power, which was not absolute, but limited by Law.

And let this be considered from the Objection.

Those actions which will produce mischievous consequences, should not be engaged in without most clear evidence of being our duty.

But to refuse Submission to the present Government, will produce, &c. therefore they are not to be engaged in without most clear evidence, which, as things now stand, cannot be accounted clear and undubetable in relation to King *James*.

Object. 2. *The King can do no wrong*; and therefore is not to be dealt with as a Malefactor.

Ans. As to your Maxim, *The King can do no wrong*, if it be understood of the King's private or personal capacity, it may be thus retorted: *The King can do no wrong*; but he that oppresseth, ravisheth, or murders an innocent person, doth wrong, therefore he is not King, (*i. e.*) in such actions he is not to be considered as a King. But this Maxim, as many others, is to be understood of the King's political capacity; in which respect the Law is his Will, and the execution of the Laws are his Actions; in which sense he can neither do wrong, nor suffer wrong, nor ever dyes. The true sense of the Maxim is this, as Sir *Edw. Cooke*, *Id potest quod jure potest*; and this he says is the King's greatest privilege, which makes him like unto God, who cannot act but agreeably to the eternal Rules of Justice; but the King acting by his own Will against Law, may do wrong; and Judgment hath been given against him for unjust and illegal Actions. And doubtless

King

King *John* and *Henry* the Third, that would have subjected the Kingdom to the Pope, (as King *James* also would) cannot be exempted from doing wrong, though, as it was necessary, he must use many Instruments therein. *Abab* did wrong *Naboth* in taking away his Vineyard, as well as his Instruments that did act under colour of Law.

Object. 3. That King that is not accountable to his people for any wrong done, is not by them Coercible into a private estate; but the King of *England* is not accountable, &c. therefore he is not Coercible.

Ans. The Argument is besides the Business; for the People of *England* do not Coerce the King to a private Estate; but if he attempt to alter the Government and Religion, and enslave and destroy the People, they may use the remedy which the Law of Nature allows. *Moderamen inculpatæ tutelæ*: The Law not having appointed a legal remedy against the unjust oppressions of Princes, doth not render it sinful to use the remedies allowed by the Law of Nature: for the Laws grew up gradually, and legal remedies were introduc'd occasionally, before the institution of which remedies, it was not sinful to use extraordinary remedies, as to kill *se defendendo*, to pull down Houses in case of Fire, &c. 2. The Law provides remedies for cases within its own compass, but not for cases that may happen when the Law itself shall be subverted; it is unreasonable to expect from written Laws any directions how Subjects must behave themselves, when the authority of the Laws ceaseth.

If our Laws have not provided for the cases of the King's Lunacy, Extinction of the Royal Line, wilful Desertion, doubtfulness of Title, &c. but leave us to the general Rules of Prudence and Discretion, the same may be affirmed in the present case. 3. What is not prohibited is lawful; the cases of extraordinary nature are not included in general Prohibitions, according to that Maxim, *Consensus in rebus magni præjudicii ex verbis quantumvis generalibus non presumitur*: And *Concessione generali nemo presumitur ea concessisse quæ in specie vere similiter non esset concessurus*. And it cannot be presum'd that the Law would consent that the King might at his pleasure destroy their Lives as well as their Laws, considering how tender the Laws have been to preserve the Lives and Liberties of the Subjects, who have been always accounted a free People.

Object.

Object. 4. If the whole Executive Power of the Law is in the King, then all Laws to Coerce the King, are in effect null, because Execution is the life of the Law: But the whole Executive Power, &c. therefore, &c.

To the minor it is already shewn, in what cases and respects the Executive Power of the Law is in the People; and in other cases the King cannot suspend the Execution of the Laws by his personal Command, the Officers being bound by their Oaths as well as Law, to the due Execution of them. So that if the King in person should make unlawful Entries, hinder the Execution of Writs and Judgments, break the Peace, head a Riot, &c. Sheriffs and other Officers are bound to suppress and oppose such by their Oaths. If it be objected, that the case of the King's presence makes an exception: I answer, Neither the Oaths nor the Laws makes any such exception; And *ubi Lex non distinguit non est distinguendum*. Again, the Defence made against the King's illegal Assaults, is not an act of the Executive Power which is in the King, but of Natural Right, for in cases where the Law hath not provided a remedy, and particularly and expressly prohibited Self-preservation, there we may recur to natural and moral Remedies, and every man is allowed to be his own Judge in case of imminent danger, when there is no time allowed, nor any Judge to be appealed to.

You say, that if the King will pervert the great end for which he was appointed, and pervert the Laws, &c. then as *Bracton* says, *Datur petitioni locus licet ei frænum ponere*; (i.e.) as you expound it, to curb him by Petitions, withholding Taxes, and questioning his Ministers; there is no *ense recidendum* in our Law.

Ans. To curb by Petition, is to bind with Ropes of Sand; to question Ministers, if the Executive Power be in the King, is to no purpose; and so to withhold Taxes, if the King in the head of an Army, may compel them, nor yet is there any need of deposing or cutting off, for *Henry 3.* was not so dealt with. If a King mix himself with Outlaws and Cat-throats (against which we may, and in some cases are bound to rise) and expose himself to Casualties, the people cannot prevent that; the fault is his own. The Murder of *Edw. 2.* and *Ricb. 2.* was done by private Assassines, disowned by Parliament, and punished, or if that Age exceeded the limits of Self-defence, it

it will not prejudice such as defend themselves with moderation. And in vain are Rights granted and purchased, if they may not by any means be defended. As to the instance of Marriage; the Indissolubility of that no way infers the Indissolubility of the relation between King and people: for, first, Marriage itself in some cases admits a Divorce, as in case of Adultery, (*Impotency a vinculo*), and in cases of Cruelty, *a mensa & toro*; and in case of Desertion, after certain time, the Law allows another Marriage.

2. The Indissolubility of Marriage springs not from its being a Contract, but from a positive Law of God super-added: So that unless you can shew the like positive Precept for the Indissolubility of the relation between King and people, the argument holds not. 3. There ariseth another difference from the nature of the thing: a Nation cannot want a present Governour; so that if the King will not attend the Government, there is an absolute necessity of seeking another, which is not so in the case of Marriage; for a deserted Woman is not so suddenly destroyed, as a deserted Kingdom will be.

As to the Argument from our own and other Writers, concerning *Non-resistance*, &c. I answer, as formerly, That general Rules reach not the particular cases, which could not be foreseen or provided against. And,

2. It may be said without offence, that good Divines are not alway good Lawyers, (and the Law is the measure of our Obedience,) as appears by the Authors of the *Erudition*, and Bishop *Baneroft*, the former makes the King's *Proclamations* as binding as a Law; the later told King *James*, in the presence of *Cooke* and other Lawyers, that the King might call any Cause and judge it personally in his Chamber.

And there have been as eminent men in the Church of a contrary opinion; Bishop *Jewel*, *Bilson*, *Abbot*, and the Convocation in *Q. Elizabeth's* reign, who contributed to the War which she undertook in behalf of the *Hollanders*, which have been often quoted in the present Case, and do all approve of a Defensive War in case of imminent Danger and Destruction, contrary to the established Laws.

As to Dr. *Sanderfon's* Judgment, approved by the University, (*i. e.*) That the Right of Subjection springs from the Right of Protection, and the King's neglect of his Office, doth not free

free the Peoples Consciences from the Bonds of Allegiance.

Ans. 1. That besides the Right of Protection, an actual Administration of Government is absolutely necessary, to prevent Confusion and Anarchy.

2. A neglect to perform Duty amounts not to the case in hand, (*viz.*) visible Attempts to ruine and destroy the people which he should preserve, wherein the King doth not abuse his power, but acts beyond and without his lawful power.

3. The people defending themselves in cases of extream necessity, differs from the discharging of them from their Allegiance, (which the Doctor urgeth) yet the discharge of them from their Allegiance may follow, if the King will leave them to a state of Nature and Confusion, or subject them to such Enemies as seek to destroy them.

Object. 5. *The King never dyes*; therefore when the Right passeth from the King, it was immediately to be devolved on the *Prince of Orange*.

Ans. 1. The descent of the Crown is limitable by the Supreme Authority of the Kingdom, as appears first by practice, frequently in King *Henry* the 8th's days, and in the Marriage of *Q. Mary* with King *Philip* of *Spain*, and in the crowning of *Henry* the 7th.

2. It consists with reason, the Right of Succession being but a Humane Constitution, is alterable by a Humane Constitution. If the Order of Succession had been a Divine Right, it must have been so in all Nations, and unalterable; *Nil magis naturale quam quo modo aliquid constituitur eodem dissolvitur*. And it appears, 3. By the Act of Parliament 13 *Eliz.* and whereas the Recognition of King *James* is pleaded as a bar to that Act. *Ans.* Doth the Recognition say, that henceforth the Succession should be as the Laws of *Medes* and *Persians*; unalterable? No, they had another intent, *viz.* To silence the Disputes that had been concerning King *James* his Title, upon a Statute enabling *Henry* the 8th to settle the Succession, which Settlement, for not observing the forms prescribed by that Statute, became void; and so there was some cause for making the Recognition.

And whereas it's said, that the Act 13 *Eliz.* was made to serve a present turn, (*viz.*) to secure *Q. Elizabeth* against the pretences of the Queen of *Scots*, it is clear, that it respects the future

future Succession by making the penalty of a *Præmunire* the Sanction of that Law for future Ages.

As for the Maxim, (*viz.*) That a contrary declaration of the will of the Lawgiver, doth abrogate the former. *Ans.* Where is the Contrariety? The recognizing K. *James* his Title, which had fallen under disputes, is not contrary to that Act; and besides, it is averred, that an Act of Parliament cannot be repealed but by express mention of it; and as for the omission of it in the late Statute-Books (for it still stands in the ancient Books) this was rather done to serve a turn, than the Act of Q. *Elizabeth*, Anno 13, as is pretended.

2ly, The present Settlement is made by the Supreme Authority of the Nation; for there is the consent of the right Heir, and the People fully represented, which are essentially the Supreme Authority; the calling by Writs being only a formality, and forms cease in cases of necessity, because forms were introduc'd for common cases, to obviate frauds, &c.

But in cases of necessity, and where no fraud is used, the forms are not necessary. 2. In cases of doubtful Succession, the extinction of the Royal Line, or Lunacy, or as the case of restoring K. *Charles* the Second, it is impossible to use all the Solemnities, and yet a just Settlement may be made without them.

Object. 6. The next Doubt is concerning the New Oath, whether it be assertory, or only promissory.

Ans. First, it is apparent that this New Oath leaves out the assertory part in the Oath of Supremacy, and the alteration in so considerable a part, implies an alteration in the matter of the Oath as to that particular.

2ly, The Law doth not bind the Vulgar to inquire into the Titles of Kings; nor indeed are they capable to judge of Titles (for we must swear in Judgment); and if it be objected, that the Law binds us to assert the rightfulness of the King's Title in the Oath of Supremacy, that was only in opposition to the Pope's pretences and usurpations, which are notoriously apparent; therefore we have no reason to presume that the Legislators intended to bind us by this New Oath to assert the legality of the Title of the Governour.

The ancient Oaths of Homage and Fealty, required of every Lord from his Tenants, hath the same expressions as the present Oath: yet this Oath was not intended to assert the

Lord's Title, in point of right, nor did it oblige the Tenant in case the Lord should forfeit, alienate, or be disseiz'd.

4. An actual Obedience is sufficient to secure the Government, and therefore we cannot presume that it requires more; it doth not look backward to what is past, but respect only the future time.

5. If these reasons make not the case clear, yet they render it doubtful, and then this Maxim takes place, *Contra eum qui a pertius potuit loqui facienda interpretatio*. But of this more hath been said in Bishop Sanderfon's Resolution of the Case of the Engagement; against which if it be objected, That there is more included in the word Allegiance, than in those of being true and faithful. I answer, There seems to be less required by that word, for Allegiance signifies Obedience according to Law; and not in illegal cases, in which there is no Obedience due, because there is no authority to require it.

Concerning the Lawfulness of Self-Defence.

1. If the *English* people are so far at the Prince's disposal, as to have no right to defend their Lives against his illegal Assaults, then they are in the state of Slaves and Captives; but we are not in such a state, but Freemen and Proprietors, as the *Magna Charta* and the *Petition of Right* do evidence.

2. If to preserve our lives, &c. we may not use a defence, then we prefer the means before the end; but this is absurd, therefore the first is so. And if any Government do deprive us of that privilege which Nature grants us, it were better to have continued in a state of Nature and Anarchy, than to come under such a Government.

3. The Laws cannot be so interpreted as to be illusory, but to bound the King's power, and to give the people Rights; and yet to suffer him to destroy all at his pleasure, is a meer illusion of the Laws.

4. What hath been publickly done, and never been censur'd in the most settled times, may be presumed lawful, but the Defence of the Peoples Rights (as in the Barons Wars) was never publickly censured, but the matters contended for, were confirmed by several Charters, ratified by dreadful Imprecations, and vindicated by the expence of the Lives of the Nobles and People, therefore it may be presumed to be lawful.

5. What

5. What is permitted by the Law of God and Nature, and is not forbidden by the Law of the Land, is lawful; but Self-defence is permitted, &c. and is not forbidden by the Law of the Land, therefore it is lawful.

Object. The Declaration, that says, *It is not lawful on any pretence whatsoever, to take up Arms, &c.* forbids it.

Ans. General Prohibitions must not be extended to such extraordinary Cases, as would have been expressly excepted, if they had been expressly proposed: And they who united into Government, and made Laws to preserve their Lives, would never have consented to give one man power to cut all their Throats.

6. Treason includes Felony, and Felony Malice propense, but self-defence implies no propense Malice; therefore it is neither Felony nor Treason.

Consider these Maxims, *Quod quisque obtutelam corporis sui fecerit jure fecisse videtur quando copiam sibi Judicis qui jus reddat non habet vim vi repellere omnia jura permittunt, a jure civile approbatur modenamen inculpatæ tutelæ: So Grotius, Si corpus impetatur vi presente cum periculo vitæ non aliter vitabili, tunc bellum est licitum etiam cum interfektionem periculum inferentis (ratio) Natura quemque sibi commendat & jus est cuilibet se defendendi contra immanem secutiam: So Barcl. cont. Monarchom. l. 3. c. 8. Non sunt expectanda verbera sed vel terrorem armorum sufficere vel minas.*

Of the King's Abrenunciation.

1. To destroy the Government, is, to renounce and disclaim it, for *Animus perdendi & retinendi non consistunt. Nolle habere* is the same with *Renunciare*, but King James attempted to destroy the Government, for to destroy the Essence and Form of a Government, and alter its species, is to destroy it.

2. If the defence be lawful in the People, and [the Invasion in the Prince, then the loss of the Crown, or Right to govern doth legally follow. But the Defence and Invasion, &c. therefore the loss of the Crown, and Right of Government is ceased, and consequently so is our Allegiance.

3. To forsake a Kingdom, and leave it in a state of Nature, is to disclaim it; but the late King did so; therefore he disclaimed it. The Major is clear, because Government is necessary by an Antecedent Necessity to a particular Person's being made

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3. To forsake a Kingdom, and leave it in a state of Nature, is to disclaim it; but the late King did so; therefore he disclaimed it. The Major is clear, because Government is necessary by an Antecedent Necessity to a particular Person's being made

a Governour; and therefore rather than to continue a disbanded Multitude, a particular Man's Right or Title must cease. The Minor is clear, because he suspended the Laws, stoppt their course, carrying away the Broad Seal, discharging the Judges, and then withdrew, leaving us in confusion. If it be objected, that he was forced to withdraw. *Ans.* It was what by many voluntary Acts he had drawn on himself, and the last Act partakes of the Nature of those Actions from whence it flowed.

Object. It will be a very great Scandal to the Nation, and Church of *England*, to disclaim their lawful King without Treating with him, and seeking Reconciliation upon redress of their Grievances.

Ans. The Clergy and Nobles did often Treat by way of Petition, and humble Advice, but were rejected with Contempt. The Prince of *Orange* began to Treat with the late King's Commissioners, who were returning with an Answer, but the King left the City the day before, and ever since hath put himself out of a Condition to Treat; having given up himself to the Conduct of such as are Irreconcilable Enemies to our Nation, and Religion. None were more fit to Treat with the King than a free Parliament, which as the King had made impossible by his Method; so if it had been duly called, and chosen, yet a force would have been pretended while the Prince of *Orange* had any Army in the Nation. And what if the King had complied as *Christiern* the Second, King of *Denmark*, who after his desertion was received again, upon renewing his Oath, and subscribing to Conditions, who not only brake them all, but inviting the Nobles and their Children to a Feast, caused them all to be slain. The King of *France* shews what Faith may given to the solemn and repeated Acts of Ambitious Princes, and the observance of the Coronation Oaths, and many publick Declarations by our King.

2. As to the case of Scandal, I know not any sort of Christians that can justly be scandalized at such proceedings, or condemn that practice in others, which they allow in themselves. As for the Papists, the principles of their Religion oblige them not to endure a Prince of a different perswasion, who to their Power, and beyond it have endeavoured to depose any Prince whom they judge Heretical; the not owning of the Pope's Supremacy, is thought a sufficient cause for excommunicating

communicating first, and then deposing such a Prince, and incouraging the People to withdraw their Allegiance, and take Arms against them; witness the Bull of Pope *Pius* against Queen *Elizabeth*, and the approbation of that hellish Powder Plot against King *James*, for the contrivance whereof *Garnet* was numbred among their Saints at *Rome*; and the deposing of Kings and Emperors of the *Romish* Communion hath been often practised by the Pope in *Germany*, *France*, and other Countries, on frivolous pretences, as the History of former and later times doth abundantly manifest. And our own Chronicles shew what was practised by the *English* Nation, when it was wholly at the devotion of the Pope, in deposing one King, and choosing another. And God forbid that any Protestant Nation should be guilty of such Principles, or Practices, as have been received and allowed of by the *Romanists*. Our case is vastly different, as is evident by the Declaration of the Lords and Commons; the many Grievances therein mentioned, and the occasion of a just War given to the present King, reduced the late King, who had wholly destroyed the Foundation and Species of the Government, to desert the Nation, and to fly to *France* for refuge, leaving his People in Confusion, and made it necessary for them to do what they have done, to prevent their utter destruction by those Flames, which he having kindled, fled from them for his own security.

Nor can any Protestant Nation be scandalized at our Transactions, they having done the same thing on a like occasion. Thus the *Suedes* excluded *Sigismund* the Third, and his Heirs, for altering the established Religion, by introducing Popery, and sending his Son to be educated a Papist; for violating his Oath, altering the Laws, raising Souldiers, and exacting Money contrary to Law; causing a Nobleman to be assassinated for dissuading him from his illegal Practices, punishing such as would not receive the *Romish* Religion, and deserting his Country without consent of his People, for which causes he was adjudged to have Abdicated his Kingdom, and the Nation chose *Charles* Duke of *Sudermannia* to succeed him. *Christiern* the Second, King of *Denmark* was so dealt with by his People: and what the *Hollanders* did against the King of *Spain*, and the *Scots* against Queen *Mary* is generally known; and neither of these can be scandalized at us, who have acted more innocently than the best of them.

Object. From the Act of 13 of *Q. Elizabeth*, which makes it high Treason during her Reign, and forfeiture of Goods ever after, in any wise to hold or affirm that an Act of Parliament is not of sufficient Force and Validity to limit and bind the Crown of this Realm, and the descent limitation and inheritance thereof. It is objected, that this Act concerns not the present case, seeing what is to be done for the descent and limitation of the Crown, is to be done by an Act of Parliament, but a Convention is no Parliament; and that Act was made only to serve the present Interest of the Queen, against the Claims of the Queen of *Scots*.

Answer.

Ans. That in the circumstances wherein we were left, there was this Remedy left us, and no other; the late King having immediately before his departure destroyed the Writs for calling a Parliament, though he had prepared the Elections for such a one as might serve his purpose. And an extraordinary Distemper requires unusual Applications; yet this was the most usual and proper means, for what could heal our Distractions, but an unanimous agreement of the People, in choosing a Convention, when a Parliament could not be had? And who were more able or likely to consult for the common welfare, than the Lords Spiritual and Temporal, and the Representatives of the People duly Elected; with whom the King having left them in Person, left his Authority with them, and they became as August an Assembly, as ever any Senate of the Ancient *Romans*, when the Empire became void, who had the Power to create an Emperor; which also had been often practised by the Ancient *Britains*. Nor was it fit that the Nation should continue without a King, least every Man should have done what seemed good in his own Eyes, as when there was no King in Israel. And though a Convention have not the formality of a Parliament, yet that being not to be had, it hath a greater Power than a Parliament, because they act not as Subjects, but a free People who may choose their King, and make such Laws for Government, as shall not be in the Power of the King and Parliament to dissolve, without the Dissolution of the Government itself, as when the Foundations are destroyed, the Fabrick must fall; nor was there any one to invalidate the Acts of a free Convention, as the King in Parliament might do by his Negative Voice.

2. And whereas it is objected, that the Act of 13 *Eliz.* respected only the Title of that Queen, and was made to serve the present turn; this is contrary to the express Letter of the Act, which provides that ever after it should be punishable with forfeiture of Goods in any wise, to hold or affirm that an Act of Parliament was not of sufficient force, &c. So that this Act still continues in force, as the reason of it doth, viz. to prevent the dangerous disputes concerning the Succession.

Object. But the Convention ought to have set the Crown on the right Heir, as the most likely means to prevent all Disputes.

Ans. *Quod fieri non debuit factum valet*, That which ought not to be done in more peaceable times, may be warrantably done in case of imminent danger, and *Necessitas cogit & defendit*. The Affairs of the Nation were involved in so many Intricacies, by reason of a Confederacy of the Popish Princes against the Protestants throughout all *Europe*, and the delivering up of *Ireland* into the Possession of the Papists, who also had the Command of the strength of *England* by Sea and Land, that the Courage and Conduct of a Woman, though never so well qualified, could not be thought competent to wrestle with so many and great difficulties; and who more fit to unite so Noble, but distorted a Member as the Kingdom of *England* to the Body of the Protestants, than he who by mutual Consent of the Princes of that persuasion, was chosen to be their Head;

Head; who also being of the Bloud Royal, and having married the right Heir, was by her consent, and by the consent of the Princess *Anne*, as well as by the unanimous consent of the Nation, chosen to stand as a Skreen between them and the Fury of the *French King*, to defend their Title to the Crown, which he had so successfully recovered from a lost condition; Or who so fit to wear the Crown, as he that won it for himself and the Right Heirs, when otherwise they might have despaired of it? It was doubtless a commendable action of the Men of *Israel*, to rescue *Jonathan* from the Fury of his Father *Saul*, who sought to destroy his life, as well as to defeat *David* of the Crown, to which God had appointed him to succeed: And it is as commendable in our Nation, to commit the defence of the Crown of *England* to that Heroick Person, who hath so wonderfully restored it to the right Line: And who can pretend any Injury is done in that case, wherein all Parties that are concerned, do expressly agree and acquiesce?

Object. But this was not agreeable to the Declaration of the Prince of *Orange*, at his first coming to *England*.

Ans. 1. The Prince declared, That he would refer all Matters in question, to the Determination of a Parliament freely Elected; which doubtless he would have done, had the late King been as willing to confide in the good will of his own People, as the Prince was; but having not Confidence to abide the Decision of a Parliament, he frustrated that end of the Prince.

Ans. 2. One end of the Prince's Invasion was to vindicate the Title of his Lady, and that which he also had to the Crown; which being by the late King's rashness and precipitation made void, it was necessarily devolved on the Convention to supply, and in the circumstance wherein we were, they could not do otherwise.

Object. The Convention is no Parliament, and therefore can make no Laws, much less can it dispose of the Crown.

Ans. Though the Convention want the formality of being called by the King's Writ, yet it hath the power and authority of a Parliament, and in some cases greater, as hath been shewn, and may thus farther appear: In the 36 of *Edward the Third*, we have this Clause in the Statute, *That for maintenance of these Acts*, (viz. *Magna Charta*, and others relating thereunto, for the Publick Good) *and for the redress of Publick Grievances, which daily happen, a Parliament shall be holden every year*; as was ordained by another Statute, viz. 4 *Edw.* 3. c. 14. These Laws were never yet formally repealed; and the reason of a Law continuing, it is reason the Law should be still in force, especially when it concerns our *Magna Charta*, and other Statutes made to prevent the Mischiefs and Grievances which daily happen. And Judge *Vaghan* in his Reports says, *That in cases which depend on fundamental Principles, millions of Precedents (to the contrary) are to no purpose.* So that the neglect of observing such a fundamental Law as maintains our *Magna Charta*, cannot make these Laws void.

In the Act for Triennial Parliaments, made in the Reign of *Charles* the First, it was provided, *That if the King should fail to call a Parliament according to those Statutes, (viz. 4 & 36 Edw. 3.) The People should meet without any Writs at all, and choose their Parliament-men.* This Triennial Act of *Charles* the First was repealed by another Act for Triennial Parliaments at the return of *Charles* the Second, because it was thought that it intrenched on the King's Prerogative, to which, as the effect shews, they were too much devoted, wherein yet they took notice, *That because by ancient Statutes of the Realm, made in the Reign of Edw. the Third, Parliaments were to be held very often, it was enacted, That within three years after the determination of that present Parliament, Parliaments should not be discontinued above three years at most, and should be holden oftener if need required;* but were omitted from October 1685, to the time that the Convention met, (i. e.) above three years.

Now if ever there was need for calling a Parliament, it was in the case of our late Revolution; and seeing the late King did then refuse to call a Parliament, it was necessary that the People should for the maintenance of our *Magna Charta*, and other Statutes relating thereunto, otherwise we had been left without a remedy in our greatest extremity; therefore I conclude, that the Convention had the power of a Parliament, and from thence, that by the Statute 13 Eliz. this present Parliament had the power of limiting the Descent of the Crown, which they have devolved on the present King and Queen, and that they are legally in the possession of it, and all the Laws made by the present Parliament, are obligatory to the Subjects.

Concerning the Declaration, *That it is not lawful on any pretence whatsoever to take Arms, &c.*

What provocations the late great Indignities which both the Royal Family, and all Loyal Families had suffered in the late Rebellion, I need not say; and what opposition was made by some *Parliament-men* of both Houses, at the passing of the Declaration, and by what secret and unsuspected Arts and Insinuations they were moved to pass it; but certainly if the effects of it had been foreseen, and they had considered maturely what ill conclusions might be inferred from those premises, such as the establishing an Arbitrary Power, and ruling by a standing Army, and destroying many wholesome and fundamental Laws, they would never have contributed to the establishing of their own Slavery by a Law.

Of this design the Parliament-men in both Houses became sensible: And when in the thirteenth Session of the Parliament, 1675, the like Declaration was required as a Test of all Parliament-men, in either House, and of all Officers of Church and State, (viz.) I A. B. do declare, *That it is not lawful on any pretence whatsoever, to take up Arms against the King, &c.* there was great opposition made against it, as a Bill of dangerous consequence; inasmuch, as it was debated five several days in the House of Lords, before it was committed to a Committee

(ante at the House) The Lords that opposed it, were of great
 Quality for Parts and Interests; their Names, as I find them, were,
 Buckingham, Brackley, Winchester, Salisbury, Bedford, Dorset, Albany,
 Bristol, Denbigh, Paget, Mordaunt, Peter, Howard of Berke, Mordaunt, Stamford,
 Halifax, Denbigh, Ears, Shaftesbury, Clarendon, Grey, Roll, Say and Seal,
 Wharton, Dudley, Fincham, &c. The Bill was intended to prevent the Dangers which may arise
 from Persons disaffected to the Government. Divers amendments and al-
 terations were proposed; some would have it run thus, in the second
 part of it, — I do abhor that Traiterous Position of taking Arms by the King's
 Authority against his person, or against those that are Commissioned by him,
 according to Law in time of Rebellion or War, &c. And as to the third
 part, concerning Church-Government, some would have it run thus: I do
 swear not to endeavour by force or fraud to alter, &c. Others thus: I do
 swear that I will not endeavour to alter the Protestant Religion now by Law
 established in the Church of England. But the first part about taking
 up Arms, was most hotly disputed: And first they debated the Form;
 whether there should be any Oath in the Bill. Here they argued against
 the multiplying of Oaths; and that there was really no Security to any
 State by Oaths; and that no private Person, much less a Statesman would
 so order his affairs, as to rely on them: No man would ever sleep with
 open Doors, or unlockt Treasure, or Plate, should all the Town be sworn
 not to rob. Then was the Assertory part of the Declaration debated,
 and it was urged, That Assertory Oaths and Declarations were properly
 appointed to give Testimony of a matter of Fact, of which a man
 may be assured by the evidence of his senses, but not to confirm or inva-
 lidate Doctrinal Propositions; and that the Legislative Power which
 imposeth such an Oath, assumes to its self an Infallibility, and must sup-
 pose all that take it to be infallible; which could not be supposed in ig-
 norant and illiterate Men; and that Promissory Oaths in the judgment
 of Grotius, De Jure Belli, l. 2. c. 13. are forbidden by our Saviour,
 Matth. 5. 34, 37. not to be multiplied; and that to declare upon Oath,
 and to swear upon Oath, were the same thing: And that to declare up-
 on Oath, That it was not lawful upon any pretence whatsoever, to take up
 Arms against the King, might introduce a new Form of Government;
 that it was better to leave such things in Generals, as in the Law of 25
 Edw. 3. which makes it Treason to take up Arms against the King,
 and the restraint of it to any case whatsoever, would destroy the distinc-
 tion between Absolute and Bounded Monarchies, if Monarchs have
 only the fear of God, and no fear of Man to restrain them; and that
 our Ancestors took care that the Prince's safety should be in them,
 and never would endure a mercenary or standing Army, though Com-
 missioned by the King; and that the declaring an Abhorrence of that
 Traiterous Position of taking Arms by the King's Authority against
 his Person, being set down in universal Terms, is not always to be
 understood as Traiterous, there being but one case, and such as is not
 like

like to happen again, wherein it was so, (*i. e.*) the Case of the Long Parliament; but other Cases might and did often happen, wherein taking Arms against such as were Commissioned by the King, might be the Subjects Duty; as in the instance of *Henry the Sixth*, being taken Prisoner by *Edward the Fourth*, who pretended to the Crown; and the Earl of *Warwick* who gave out what Commissions they pleased; but his Wife and Son raised Arms against such Commissions, and rescued the King's person by fighting against such Commissions; And lastly, that not to take Arms against any that were Commissioned by the King, did evidently introduce Arbitrary Government; and if whatever is by the King's Commission, is not to be opposed by the King's Authority, then a Standing Army is Law, whenever the King pleases; and that the King's Commission was never held sufficient to justify any Man acting against his Authority, which would destroy the most essential and fundamental part of Law for Liberty and Property, and make the Government Arbitrary. And it was urged, That if a Man recovers possession of his House, and is by the Sheriff put into it, and the person ousted procure a Warrant to some Commissioned Officers of a Standing Army, to deliver back the Possession, the person that is in possession by Law, may defend himself by Arms, against those who by Commission from the King come by force to Eject him out of his Possession. So that such a Declaration and Oath was to establish another Government (which the Oath of Allegiance knew not,) and then swear to maintain it as established. All this, and much more, notwithstanding the Declaration as it stands, after sixteen or seventeen days spent in arguing, was confirmed, and the Consequences plainly manifest, how unreasonable it was in it self, and how mischievous to the Subjects; and therefore *is by the Act 24 April last, laid aside.*

Concerning the Present Oath. The Oath of Allegiance and Supremacy being abrogated, our Allegiance was reduced to the Oath of Allegiance, as it anciently stood, and was to be administered in the Court-Lect; the Form whereof runs thus: *You shall swear that from this day forwards, you shall be true and faithful to our Sovereign Lord the King, his Heirs and lawful Successors, &c.* which words do not assert the Title to the Crown, nor look backward to what is past, but assures Fidelity for the future; and our Legislators plainly declare, that by the words in the late Oath *I will be faithful and bear true Allegiance*, is the same Fidelity meant, as in the Declaration ordered to be subscribed by some Dissenters, viz. *To be true and faithful:* And doubtless the Legislators who are of the same Communion in the Church of England, could not think of laying a greater restraint or obligation on the genuine Members of that Church, whom they have found to be always Faithful; then upon such Dissenters as had been false. And had the two Houses thought or suspected any snare in it, they would have been

been so far from laying it on the Consciences of others, that they would not have touch'd it with one of their Fingers. So that our Legislators have in the Subscription required from those Dissenters, clearly resolv'd what they meant by the word *Allegiance* in the Oath, namely, *To be true and faithful*; in which sense as many have declared they would take it, without any farther scruple: So I see no reason but all may, except such unreasonable Men, as bogling at shadows from the word *Allegiance*, are resolv'd to incur the sad consequences of being judg'd Rebels.

I have one Request more, which I intreat such of my Brethren as are yet Unresolv'd, seriously to consider, viz. That having devoted their Persons and Services to Almighty God, in the Ministry of the Church of England, they cannot without the guilt of Sacrilege in a high degree, and upon very clear and demonstrable Arguments, withdraw themselves from that Ministry, especially in such a juncture of time, when there are so many grievous Wolves, some in Sheeps cloathing, and others with open mouths roaring for their Prey, that seek by all means to devour their Flocks; and by the loss of her Ministers, the Church itself may be in a short time destroyed; for there are still too many that bear evil will to God, and would down with it even to the ground? And if it should be found, that we have mistaken the Service of God, on a Mistake or Prejudice, when we shall be called to an account, how we have fulfilled our Ministry, and watched over the Flocks, whereof the Holy Ghost had made us Overseers, we must have some substantial Reasons to plead in our Excuse, or we shall never render an Account with Joy. The Evil Spirit hath (not without a Miracle) been lately cast out, and is toying up and down, seeking how to enter again; and if we by our Divisions should make a breach for him to enter by, he will bring with him seven-fold more, and dwell among us, and make our later end worse than the beginning. It is sad, when we shall be reduced to such a condition as sometime the Roman State was, which could neither, *ferre Vulnera, nec Remedia*, endure their Wounds nor the Remedies of them. If we by our Obstinacy do frustrate all the means of our Salvation, and receive the Grace of God in vain, and being fond of kissing the Rod that smote us, do resist the Hand that would heal us, there must be a greater Miracle wrought for our Salvation, than hitherto God hath wrought for any man, that is, to save us against our wills: *Cujus aures clausa sunt ut ab amico veritatem audire nolit, hujus Salus pene desperanda est.*

F I N I S.

ADVERTISEMENT

A Resolution of Certain Queries, concerning Submission to the Present Government.

The QUERIES.

- I. *Concerning the Original of Government.*
 - II. *What is the Constitution of the Government of England?*
 - III. *What Obligation lies on the King by the Coronation Oath?*
 - IV. *What Obligation lies on the Subject by the Oaths of Supremacy, &c.*
 - V. *Whether if the King Violate his Oath, and actually Destroys the Ends of it, the Subjects are freed from their Obligation to him?*
 - VI. *Whether the King hath Renounced or Deserted the Government?*
 - VII. *Whether on such Desertion the People, to Preserve themselves from Confusion, may admit Another, and what Method is to be used in such Admission?*
 - VIII. *Whether the Settlement now made, is a Lawful Establishment, and such as with a good Conscience may be Submitted to?*
- By a Divine of the Church of England, as by Law Established.